NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22288
THIRD DIVISION Docket Number CL-22267

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Elgin, Joliet &Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8476)that:

1. Carrier violated the effective Clerks' Agreement when it improperly withheld Clerk Margaret Wadman from service for a period of three days for physical reasons.

2. The Carrier shall now compensate Ms. Wadman for eight (8) hours' pay at the pro rata rate of Position GT-25 for each of dates March 24, 25 and 26, 1976.

OPINION OF BOARD: Claimant was on a medical leave of absence starting June 28, 1975. When she advised the Carrier some time prior to March 23, 1976 that she was able to return to work, she was furnished a form to be completed by her personal physician and instructed to report for a physical examination by a Carrier physician.

The form completed by Claimant's doctor on March 19, 1976 stated that she could return to work but that she should not stand or walk for a prolonged time (greater than 10-15 minutes at a time). On March 23, Claimant reported to Dr. Burton, Carrier physician,with the form. Dr. Burton disapproved Claimant for service because "her doctor restricts her work."

The next day, on March 24, Claimant attempted to displace a junior employe on a Bill Clerk's position which had been posted during her absence, pursuant to Rule 18, which provides, in part, that:

> "An employee returning after leave of absence (including absence from work account of sickness or vacation)...may upon return or within five (5) calendar days thereafter, exercise seniority rights on any position bulletined during such absence...."

The duties shown in the bid notice, signed by Carrier's Agent and posted in his office, primarily involved operation of an automated billing machine, a position clerical and sedentary in nature.

Claimant's bid was declined by Carrier's Agent that same day, March 24, "due to physician's disapproval." Claimant, her local chairman, and the Agent met that day on the matter.

On March 26, Carrier's Chief Surgeon, after reviewing Claimant's medical records,. approved her return to work to a job that did not require "standing for prolonged periods, walking, climbing, etc.," with the proviso that her medical qualifications would have to be re-evaluated should she bid on jobs "other than those of a sedentary nature."

The Organization maintains that Carrier abused its discretion in not returning Claimant to work on March 23, and that it violated Rules 18 and 62 of the applicable Agreement.

Rule 62(b) reads:

> "(b) An employe will not be withheld from service or removed from service account physical condition unless it is definitely determined by an examination by a Company physician that the employe is unfit to perform his usual duties. If the employe is removed or withheld from service, prompt written notice will be given by the Carrier to the employe setting forth the physical condition of the employe and the reason why the Company physician determined the employe is unfit to perform his usual duties."

Specifically, the Organization maintains that Claimant passed her physical examination but was still withheld from service; that Rule 62 requires a definite determination that an employe cannot perform his regular duties before the employe can be withheld on physical grounds; that Dr. Burton, Carrier's physician did not disqualify Claimant on the basis of his own findings or on the basis of Claimant's doctor's restrictions since these restrictions were not applicable to the position on which she bid, which involved no walking or standing.

Carrier upholds its actions on the grounds that Claimant did not meet its physical requirements for clerical employes; that her bid to exercise displacement rights was premature, since on March 24 she was still on medical leave of absence, her return to work having been disapproved on March 23 because of the restrictions imposed by her own doctor; and that Claimant had been notified her case had been referred to Carrier's Chief Surgeon. Carrier also refers to the fact that it took prompt action: Claimant's file was submitted to the Chief Surgeon for review on March 25, the next day after the meeting with the Agent, and that the Chief Surgeon approved her return for work of a sedentary nature the next day, March 26.

Claimant's personal physician stated that she could return to work, subject to the restriction that she could not stand or walk for a prolonged time. In light of Claimant's doctor's medical opinion and the requirement of Rule 62(b), it was then incumbent upon Carrier, through a physical examination by its own physician, to determine whether Claimant was in fact able to return to work (albeit with the restrictions noted by her personal. doctor).

Rule 62(b) imposes a dual requirement upon Carrier: (1) an examination by a Company physician and (2) determination of an employe's fitness to perform his or her usual duties.

When Claimant notified the Carrier that she was able to return to work, she was instructed to report for a physical examination by a Carrier physician. It is not clear from the record that Carrier's physician, Dr. Burton, conducted such an examination. Carrier's Agent, in rejecting the Organization's appeal, stated that "Dr. Burton's disapproval was based on the restriction /Claimant's/ personal physician, Dr. R. N. Stauffer, had placed on her 'Verification of Private Medical Care' report."

The Organization argues that Carrier did not comply with Rule 62(b) since it did not give Claimant a written statement pertaining to her physical condition. Dr. Burton's report of his examination of Claimant contains no information on Claimant's physical condition. The sole comments are a check-mark next to word "disapproved" and the Statement "Her doctor restricts her work" as the reason for disapproval.

The Organization also asserts that Dr. Burton did not approve Claimant's return to duty on the basis of her own doctor's restrictions, since these restrictions were not applicable to the position on which she bid. This assertion cannot be supported. Dr. Burton examined Claimant on March 23; Claimant's bid was filed on March 24. Also, there is no evidence in the record before us that Claimant informed Dr. Burton of her intent to bid on the Bill Clerk's job or that she described the duties of such job.

Carrier's Ex Parte Submission states that Dr. Burton informed Claimant that he could not approve her return to work until he had an opportunity to discuss the case with the Chief Surgeon because of the restrictions stipulated by the Claimant's personal physician. Although the medical examination report completed by Dr. Burton contains a box designated "Deferred to Chief Surgeon," the box is not marked.

Since the physical (medical) examination is to determine Claimant's fitness to perform her usual duties, such an examination should be related to the position she occupied at the time she went on medical leave of absence or, if that job were no longer available, a job she could claim on the basis of her seniority, subject to whatever restrictions were prescribed by her personal or Carrier physician. There is nothing in the record to indicate that Dr. Burton discussed with Claimant the type of work she was doing prior to her leave or the position(s) available to her at the time she presented herself for his examination on March 23.

The state of the record before us leaves many questions unanswered: What position did Claimant occupy at the time of her illness and what were her duties; was that position still available at the time she sought to return to service and would the duties thereof have fallen within the restrictions set by her own doctor; was she actually examined by Carrier's physician, Dr. Burton, in compliance with Rule 62(b) and if so, in relation to what job requirements; did the Agent who knew the job contents of the position on which Claimant bid on March 24 apprise Dr. Burton of such content in relation to the restrictions imposed by Claimant's doctor; etc.

As previously noted, the record in some instances fails to provide substantive support for assertions made by both parties.

It is true that Claimant's personal physician stated that she could return to work. But that opinion also included an explicit restriction, calling for the exercise of medical judgment, as to whether Claimant could perform the duties of positions available to her within the confines of such restrictions. Without intending to

substitute our judgment for that of those with responsibility for determining an employe's physical fitness to return to work, it would have been helpful to this Board had the record included probative evidence that Claimant's physical examination by Carrier's physician was related to the physical requirements of jobs which Claimant could claim under the applicable Agreement. (See Third Division Award No. 20548).

As it turns out, Carrier's Chief Surgeon apprwed Claimant's return to work with essentially the same restrictions or conditions as those prescribed by her own doctor.

The Awards of this Board have concluded that the Carrier has a right to require an examination by its physicians prior to restoring an individual to duty, including the right to review of such finding by its Chief Surgeon. Such discretionary power and review was not arbitrarily or capriciously exercised in the instant situation. Unlike many cases involving medical examinations, we are not confronted here with a question of undue delay on the part of Carrier in returning an employe to service following a disability. The Chief Surgeon's review and approval was given within three days after Claimant reported for examination by a Carrier physician. We thus will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: N. W. Pauley
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 197'9.