

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24841
Docket Number MW-24614

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) Trackman A. A. Sandoval shall be returned to his position as trackman and he shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service beginning July 11, 1980 (System File 104-400.26-805/11-1500-20-15)."

OPINION OF BOARD: On July 11, 1980, the Carrier informed the Claimant, A. A. Sandoval, that he could not go to work pending his submission to a medical examination. The Claimant was examined on July 23 and, on November 7, 1980, informed of his medical disqualification from work.

The Organization argues the Carrier violated Article XII, Section 2(a) of the agreement when it withheld the Claimant from service. The Organization asserts the agreement clearly contemplates that medical disqualification must be the result of a physical examination rather than lay opinion. In its submission, the Organization cites Second Division Awards 7033 and 7064 in support of this proposition. While it is true that this Board upholds the imposition of showing competent medical evidence to support an employee's disqualification, we point out that the record shows the Claimant was not medically disqualified on July 11, 1980.

The Carrier's submission contains reference to forty-one (41) dates beginning with July 8, 1980, and ending on September 19, 1981, which it deems a chronological history of the pertinent events involved. The Organization's submission reproduces twenty-eight (28) letters, many of which are physicians' reports. Clearly, the parties could not reconcile what they believed to be supportive medical opinions dealing with the Claimant's capacity, or lack thereof, to return to work. On April 13, 1981, the Claimant was administered a neurological examination, the results of which were finally recognized by the Carrier to trigger selection of a third physician to examine the Claimant pursuant to Rule 26. Following this examination, the Carrier declined to restore the Claimant to service because that third physician had recommended the Claimant be restricted from operating major power tools and equipment and from working in high places.

The Organization disputes the Carrier's interpretation of the third physician's report and contends the Claimant was found qualified to perform duties as a trackman. Notwithstanding, the Organization admits the third physician did not indicate the Claimant could return to work on an unrestricted basis.

Since the Organization views the medical evidence as not establishing the Claimant suffered from epilepsy or any other seizure disorder, it considers the third physician's report as arbitrary and unwarranted. This Board does not view the extensive medical submissions as supportive of such a finding.

In view of the long period which has elapsed since the Claimant was last examined by the third physician on July 13, 1981, this Board does not believe that either party is in a position to correctly assess the Claimant's present condition as it relates to his capacity to return to work as a trackman.

The Board, therefore, directs the parties to select a third and independent physician following the guidelines of Rule 26, Section (b) (2) to examine the Claimant in the most expeditious manner possible. In the interim, this Board will retain jurisdiction to insure that the results of that examination will govern the Claimant's right, if any, to return to work.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

A W A R D

Claim remanded to property in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June, 1984

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 to AWARD NO. 24841

DOCKET NO. MW-24614

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way Employees

NAME OF CARRIER: The Atchison, Topeka and Santa Fe Railway Company

In this case, the Third Division directed the parties to select a third and independent physician following the guidelines of Rule 26, Section (b) (2) to examine the Claimant. The direction was complied with and, as a result, the Claimant was returned to service on October 8, 1984.

The Organization requests an Interpretation of the Award contending the Claimant was improperly withheld from service beginning July 11, 1980, and is, thereby, entitled to be compensated for loss of earnings.

To reach the conclusions the Organization asserts, it would, in effect, require a reconsideration of the merits. As stated in Interpretation No. 1 to Award No. 4967,


"An interpretation of an award may not properly be treated as a rehearing or a new trial of the merits of the case."

The language of Award No. 24841 is clear and unambiguous. There is no necessity for further clarification. Accordingly, the Organization's request is denied.

Referee Robert W. McAllister, who sat with the Division as a member when Award No. 24841 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1985.