

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25649
Docket Number MW-259'12

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(Southern Railway Company

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

(1) Laborer J. R. Blakey, Jr. shall be returned to his position as laborer and he shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service beginning January 21, 1983.

OPINION OF BOARD: Claimant was engaged in Maintenance of Way work as a track laborer for Carrier. While **so** engaged at work he injured his back, eventually requiring surgery for the injury according to the Organization and meantime, as of June 8, 1978, putting him out of service then and since. On November 9, 1982, Claimant attempted to report to work and accordingly sought the services of doctors, both privately and company retained, so that they could physically examine him for fitness to return.

Claimant's back was in a condition such that medical opinions then rendered on the subject were in conflict, and Claimant was medically disqualified from Carrier by letter of its Medical Director dated March 29, 1983. Resorting to Rule 69 procedure to put the controversy at rest, the parties mutually selected a Neutral, Dr. Richard H. Cord, an **orthopaedist**, for the deciding opinion. They agreed it was to be final and binding on them because of the need to reach finality at some point. Rule 69 specifies the Findings of the Neutral doctor shall be final and binding on the parties.

As the Neutral doctor in making his independent examination of Claimant's back and the past medical records thereon, had before him two specific questions **to be** answered: "1) whether (Claimant) Mr. Blakey is capable of returning to work without restrictions. and 2) if we (Carrier) were justified in keeping him from returning to the job based on (Carrier's) **Doctor Slappey's** evaluation."

In compliance therewith, the Neutral doctor, in the concluding paragraphs of his resulting medical opinion numbering three pages, stated:

"I find no significant abnormalities in regards to any of his **xrays**. I see no evidence of fractures, subluxation or dislocations. I see no significant arthritic changes on any of them.

"In answer to the specific question as to whether Mr. Blakey is capable to return to work without restrictions would be of some concern. With this mans (sic) history of severe back pain persisting for four years with multiple assessments and treatments without relief and then essentially full recovery with the help of hanging type traction would leave me with some concern as to whether or not his back pain may recur with extreme stresses physically. I have no way of knowing whether **or** not this could return.

"In my opinion I would be reluctant to permit this man to return to his former activity without all parties being aware that his symptoms might recur.

"I do not find fault with your decision of not permitting him to return to **work.**"

A plain reading thereof in more positive vein seems in favor of preserving that status quo of the Claimant being, and hereinafter remaining, out of service. Otherwise, Claimant if working would be chancing extreme stresses physically and risking recurrence of his same symptoms.

The Organization isolates the very first one of the Neutral's concluding paragraphs as reproduced verbatim above, quoting it as being the objective clinical portion they find in his opinion: **"I find no significant abnormalities in regards to any of his xrays. I see no evidence of fractures, subluxation or dislocations. I see no significant arthritic changes on any of them."** But that portion has to be placed in the full context which notably includes reference to the Neutral's review of Claimant's well documented medical history, perhaps as to the back surgery, Claimant's prolonged lower back pain and his still ongoing treatments to help, his big frame noted as very tall as well as large, with some increase weight in the abdominal area, and the extreme stresses to which he is physically subject to at work. This Division cannot substitute any judgment of its own to dissect and reconstitute the basis for what should have been the Neutral's conclusion from all the portions, properly weighed medically, within his opinion.

Nowhere do we find, in the Organization's just quoted short portion **or** elsewhere in that medical opinion, any comment **or** suggestion that medical disqualification from Carrier is not appropriate to Claimant's condition. Nor do we find any recommendation that Claimant be restored to performing his Maintenance of Way duties without restriction. So we see no reason for us to interfere, to disturb the status quo.

Third Division Award 14249 required us, for reasons not altogether apposite here, to determine just what are the scope and effect of the outcome of a Rule 69 proceeding. **What** we there determined was:

"...It intuitively follows that if either party fails to prevail in this procedure, it cannot expect a board of arbitration to ignore the 'final and binding' decisions in Rule 69 and set up a new disputes procedure outside the agreed-upon process. **Clearly**, the language of Rule 69 renders such action beyond the authority of the Board.

"The Agreement's recognition of the limited jurisdiction of arbiters and Boards of Adjustment in medical cases is well founded. Boards of Adjustment are not composed of doctors. Arbiters do not possess the detailed medical knowledge which enables physicians to determine the medical fitness of employees to continue in service. The necessity for this medical knowledge is emphasized by the Physical Examination Rule."

We here hold with the philosophy of Third Division Award 14249 and will therefore deny the claim in the present dispute. We cannot disturb the outcome reached, final and binding.

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 Employees involved in this dispute are respectively Carrier and Employees 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: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1985.