

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25801
Docket Number MW-25909

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Agreement when it improperly withheld Welder Helper G. D. Wallace from service beginning April 13, 1983 (System File MW-83-25-CB/397-87-A).

(2) The claimant shall be returned to his position as welder helper and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant, a former Welder Helper for Carrier, suffered a gunshot wound to the chest and left shoulder in an off-day incident on March 1, 1983, and was hospitalized at Jefferson Regional Medical Center Hospital in Pine Bluff, Arkansas. On April 8, 1983, a Doctor James A. Lindsey released Claimant to return to work. On April 11, 1983, he reported to the Regional Engineer's office with the release from Dr. Lindsey. He then filled out a medical history form, indicating that he had had or then had many serious physical and mental problems. He was subsequently sent to Dr. A. G. Sullenberger for a return to duty examination. Dr. Sullenberger recommended that the Carrier obtain further information concerning Claimant being treated by a psychiatrist before permitting him to return to work. After receiving a report from a psychiatrist at the Southeast Arkansas Mental Health Center, the Carrier's Chief Medical Officer found that Claimant was not qualified for service. Claimant was notified accordingly on September 19, 1983. He then requested a hearing under the Discipline and Grievance Rule of the applicable Agreement, to which the Regional Engineer responded in part:

"...Your disqualification was for medical reasons as a result of the reports from the various physicians from whom you have received treatment. These reports were reviewed by the Carrier's Medical Department. Disqualification for medical reasons are not considered discipline and as a consequence you are not entitled to a disciplinary hearing pursuant to Article 14 of the current agreement."

The Board agrees that medical disqualification is not considered discipline.

In the handling of the dispute on the property, the Organization contended:

"...since the St. Louis Southwestern Railway Company's Medical Department has rendered its decision not to return Mr. Wallace to service as a result of medical reports by Dr. Ragsdill and Dr. I. L. Carlton as well as various psychiatric examinations, it is the Carrier's responsibility to furnish copies of these reports.

"We now request that a copy of all medical reports as outlined above be furnished for our files."

The Carrier's Labor Relations Officer responded:

"...Our files do not contain the information that you have requested. However, if you would furnish this office with a written release from Mr. Wallace allowing you to have copies of the requested medical and psychiatric reports, I will forward it to our Chief Medical Officer."

No release was furnished by the Claimant.

Based upon the record before us, we do not consider the Carrier's action in declining to permit Claimant to return to work beginning April 13, 1983, to be arbitrary capricious or in bad faith.

The Board has been furnished a copy of Award No. 193, Special Board of Adjustment No. 280, involving the contention that Claimant was unjustly dismissed by Carrier on October 3, 1983. In that Award the dismissal of Claimant was upheld.

The claim herein, actually involving the period April 13, 1983 to October 3, 1983, will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

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By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1985.