

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25903

Docket Number SG-24879

George V. Boyle, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Seaboard System Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad:

(a) Carrier through its Medical Department has wrongfully withheld Claimant Kerley from service.

(b) Carrier should now be required to restore Claimant to service subsequent to August 20, 1981, with all rights and benefits due him by Agreement.

(c) Carrier should now be required to compensate Claimant for all straight time and time and one-half subsequent to August 20, 1981.

[Carrier file: 15-00 (81-1012)]"

OPINION OF BOARD: The Claimant was first hospitalized for a seizure disorder on March 8, 1981. He had other medical problems, e. g. allergic rhinosinusitis, allergic diathesis with asthma, shortness of breath and chest pains, but the primary condition was diagnosed as "right sided focal motor seizure". He had collapsed in church while singing in the choir, had endured the seizure for approximately 5-10 minutes and when he recovered he was drowsy and unresponsive. He was treated with Dilantin and other drugs.

A chronology of subsequent events follows:

March 14, 1981 - Kerley was discharged in "good condition" and with "good prognosis."

March 25, 1981 - Kerley was readmitted for treatment of acute bronchial asthma, allergic rhinitis and anxiety; among other drugs he was treated with 200 mg of Dilantin every 12 hours.

April 1, 1981 - Discharged - "condition good . . . The prognosis is good." But the "History" states, "Recently, evaluated at this hospital for motor seizures on the right side and was started on Dilantin 200 mg. b.i.d. but the patient did not take the medicine because it was making him drowsy, with unstable gait."

- May 28, 1981 - Letter from Dr. D. R. Moomaw, Carrier physician, sent to Kerley advising him, "We are unable to approve your return to duty as assistant signalman at this time. Your records will be reviewed by the Rehabilitation Committee."
- July 27, 1981 - Letter sent to Carrier physician C. A. Mead by Dr. W. A. Margarino, "I have been treating Mr. Lawrence Kerley for bronchial asthma, allergic rhinitis, and right sided focal motor seizure possibly precipitated by anxiety and hyperventilation. . . .
At the present time, the patient is in good physical condition. I am aware of the type of work that he performs at the railroad company. He is not disabled and is able to participate in any physical, mental or working activities. . . ."
- September 8, 1981 - Letter from Kerley to General Chairman Gross: The date in which Dr. Mead's office received the letter from Dr. Margarino was August 20, 1981."
- September 30, 1981 - Claim filed by Brotherhood of Railroad Signalmen on behalf of Kerley.
- October 26, 1981 - Carrier replies, ". . . Mr. Kerley has been medically disqualified as an Assistant Signalman because of a seizure disorder. His case has been referred to the Rehabilitation Committee to determine if there is alternative employment for him. . . ."
- November 9, 1981 - Letter from General Chairman Gross requesting "that a three doctor panel be appointed to settle this dispute."
- January 7, 1982 - Letter from Carrier to Brotherhood, "In reviewing Mr. Kerley's file with the Chief Medical Officer, Dr. C. A. Mead, there is no difference between his opinion and those of the physicians who have been treating him, i.e., Drs. Margarino and Mazingo. Their diagnosis is that Mr. Kerley has a seizure disorder which requires treatment with Dilantin and other drugs. The hospital reports, specialists reports, and doctors reports

all verify this and therefore there is no justification for establishing a three doctor panel as you have suggested. . . ."

March 12, 1982 - "Certificate of Ability to Work" issued by Dr. C. A. Mead for Lawrence E. Kerley.

March 15, 1982 - Kerley returned to work.

It is agreed by the parties that the issues to be resolved are, "Was the Carrier dilatory or not in returning Kerley to work?" And if so, what is the proper recourse.

From the record and the issues involved the Board is forced to conclude that the Carrier was not dilatory.

On the one hand, the Carrier was dealing with a condition wherein the Claimant, if subject to motor seizures of 5-10 minutes duration which caused him to collapse and upon recovery to be drowsy and unresponsive, could not allow the employee to perform his normal duties. If injury or damage was sustained by the Claimant himself, his fellow employees or a member of the public, the Carrier could be liable for negligent conduct in permitting him to return to work.

On the other hand, the same dangers would prevail if the condition was controlled with the drug Dilantin which has verified side effects of: ataxia (failure of muscle coordination), mental confusion, insomnia, dizziness and transient nervousness, among others.

Thus a great degree of caution was warranted before certifying that the Claimant could resume his normal duties. While Dr. Margarino indicated that he was aware of the type of work and certified that the Claimant was able to work, he undoubtedly was not as familiar as the Carrier physician or the Rehabilitation Committee with specific job duties as spelled out in the "Job Analysis Summary - Physical Demands and Environmental Conditions for the Job of Signal Helper/Assistant Signaller." These included: Walking track to inspect and install bonds and track connectors; working with high voltage equipment; lifting signals; carrying tools to the job site; raising signal equipment into place; climbing poles and ladders, etc.

Furthermore, it was the Claimant's responsibility to keep the Carrier informed regarding any change in his condition that might warrant alteration of the Carrier's decision to preclude his return to work. This he failed to do. It was only after the Carrier had been informed by Kerley's physicians that he had discontinued the use of Dilantin and had not suffered subsequent recurring seizures that the Carrier certified him for a return to work. This information was not communicated by the Claimant but, rather, was developed by the Carrier's Chief Medical Officer.

This indicates that the Carrier, far from being derelict or negligent or in the wrong was, in fact, diligent in pursuing the Claimant's interest as well as its own.

Thus the Carrier cannot be charged with "wrongfully" withholding the Claimant from service and thus the Claim is denied.

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. Bever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.

