

The Third Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and Northwestern Transportation Company (C&NWT):

On behalf of Signal Maintainer R. G. Burtzos that;

(a) On or about May 22, 1985, the Carrier violated the current Signalmen's Agreement, especially Rule 10 when it unilaterally removed Mr. R. G. Burtzos, Signal Maintainer at Malta, IL, with headquarters at Rochelle, IL from service.

(b) The Carrier now reinstate Mr. Burtzos to his position as Signal Maintainer at Malta immediately, compensate him for all time lost, and for all time Carrier continues to keep Mr. Burtzos off his assignment. Further that Carrier also compensate him for all expenses incurred as a result of being removed from service. General Chairman file: C&NW-G-AV-62. Carrier file: 79-85-11."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Rule 10 states in part:

"Except in an emergency, an employee will not be removed from service until it is agreed between the officer in charge of labor relations and the General Chairman that the employee is unfit to perform his usual duties."

The record is clear that the Claimant was removed from service on or about May 22, 1985, by the Carrier without the agreement of "... the officer in charge of labor relations and the General Chairman ...." The Carrier's letter of August 12, 1985, states several times that the Claimant was removed from service by Dr. Cook, the Carrier's Medical Director.

The Carrier argues that its action was not unilateral, and that it acted upon the Claimant's statements of ill health, the findings of the Claimant's physician and the Carrier's best medical judgment. Notwithstanding these points, the language of Rule 10 is clear and unambiguous on this point; the agreement of the General Chairman is initially required. It must be noted however, if agreement is not reached, Rule 10 provides for the binding decision of a neutral doctor. The contentions of the Carrier regarding its perceptions of intent (Carrier Rebuttal) are not persuasive, given the language of Rule 10. The unilateral removal of the Claimant by the Carrier is a violation of the Agreement.

A remedy for this violation should take into account that: (a) the medical examination was ordered by the Carrier in part by the expressed concerns of the Claimant for his physical condition, (b) Claimant's physician stated that the Claimant could not perform his normal work and could do very little light work, and (c) there is nothing in the record of this case to indicate that the Claimant is now (or has been since May, 1985) physically capable of performing his regular assignment. Therefore, the Claimant shall be returned to service only upon a showing that he is now physically capable of performing his regular assignment. If the parties cannot reach agreement as to his present physical condition, they shall be bound by the decision of a neutral doctor as provided for in Rule 10.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.