

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(The Atchison, Topeka & Santa Fe Railway Company

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

(1) The Agreement was violated when the Carrier refused to grant Claimant C. W. Finton a three (3) doctor panel in accordance with Rule 26(b) on September 18, 1984 (System File 20-26-845/11-1500-60-19).

(2) The claimant shall be compensated for all wage loss suffered because of the violation referred to in Part (1) hereof."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 were given due notice of hearing thereon.

Claimant is employed as a Trackman on Carrier's Illinois Division. On July 11, 1984, Claimant experienced a "grand mal seizure." Claimant did not report to work until July 16, 1984, at which point he was only allowed to work a short period of time and was taken out of service pending further comments from his doctor. Claimant's doctor indicated that Claimant could return to work under restricted conditions. Carrier refused to return Claimant to work and indicated to him that he could not return until he had remained seizure free for a period of one year. When Claimant's one year of seizure-free time was up, he was processed back to work by Carrier.

Soon after Claimant was removed from service by the Carrier, a Claim was submitted requesting the evaluation of a neutral doctor, as authorized under Rule 26 of the Agreement. Carrier denied the request on the basis that no dispute over Claimant's medical condition existed. His personal doctor had indicated to Carrier that Claimant had experienced a grand mal seizure. Carrier's policy was that once an employee has experienced a seizure, he must remain seizure free for one year in order to return to work. The fact that

Claimant had a seizure is not in dispute. Only the question of whether Carrier had a right to require an employee to be seizure free for one year before returning to work is at issue.

This Board has reviewed the record and the Awards submitted in support of the parties' positions and we conclude that Carrier is clearly within its right to restrict a person from work until there is some level of certainty that the employee's presence on the property will not be a danger to himself or to others. To require that an employee who has experienced a grand mal seizure remain seizure free before he is allowed to work in and around railroad property and equipment is not unreasonable. The Organization has not been persuasive that Claimant could have in any way benefited from a panel of doctors or that he had a right to it in this situation.

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 13th day of April 1989.