

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28410
Docket No. MW-28040
90-3-87-3-617

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Louisville and Nashville
Railroad Company)

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

Track Repairman W. R. Miller shall be compensated for all wage loss suffered as a consequence of being improperly withheld from service beginning on May 22, 1986 [System File 7-56-86/12-00(86-300) Q]."

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 waived right of appearance at hearing thereon.

The basic facts in this case are set forth as follows: On January 11, 1985, Claimant underwent surgery for the removal of a brain tumor at the Humana Hospital Audobon in Louisville, Kentucky. He was discharged from the hospital on January 24, 1985, but was required to undergo irradiation therapy and take anticonvulsive medication. He later sought to return to service and thus, consistent with Carrier's procedures, his physician submitted Form 7300SRD to Carrier's Medical Department. His doctor released him for service, effective July 29, 1985, and a Medical Report was received by Carrier's Medical Department on July 31, 1985. Based on the contents of this report, he was notified by letter dated August 7, 1985, that he was medically disqualified as a Maintenance of Way Employee and was advised that he could apply for Railroad Retirement Benefits. Accordingly, and pursuant to said advice, Claimant applied to the United States Railroad Retirement Board seeking a disability annuity. However, the Associate Executive Director for Retirement Claims

apprised Claimant by letter dated May 23, 1986, that his application was denied. He was informed that his condition was not severe enough to prevent performance of any regular and substantial work and additionally advised that since he had not attained age sixty (60), he did not meet the requirements for an occupational disability annuity. In the meantime, by letter dated May 22, 1986, Claimant's physician addressed a "To Whom It May Concern" communication wherein he stated "The above-named patient is able to return to work with no restrictions." On the basis of this letter Claimant sought reemployment but was not allowed to return to work. A Claim was filed by the Organization on June 25, 1986, and denied by Carrier on August 1, 1986. In its response, Carrier stated that while Claimant had contacted the Railroad Retirement Board, there was no record of any reports having been sent to Carrier's Medical Officer after August 7, 1985. It also noted that until Claimant could furnish detailed reports from his physician and the Medical Officer approved him to return to work, Claimant was unable to work. By letter dated August 8, 1986, the Organization's General Chairman responded as follows: "I do not agree with Mr. Boles' declination of the claim, account Claimant was off due to personal illness. Letters enclosed are self-explanatory as to the illness. However, the letters all indicate that Claimant is capable of performing his normal duties." By letter dated December 2, 1986, the Director of Labor Relations wrote in part, "We emphatically disagree with your contention that Claimant is capable of performing his duties and that the letters attached to your claim allude to such. Claimant underwent surgery in January 1985, for the removal of a brain tumor. Surgery was followed by irradiation therapy with Claimant being placed on anticonvulsive medication. Medical records reveal that Claimant suffers a more than usual case of forgetfulness."

In sum and substance, the basic position advanced by the Organization was that Carrier's disqualification was arbitrary and capricious and Carrier could not validly disqualify Claimant based upon a medical opinion rendered on August 7, 1985. It asserted that Claimant's release to return to work without restrictions should have been honored by Carrier, and further noted that the Railroad Retirement Board indicated that his impairments were not severe enough to prevent him from working in all regular and gainful employment. (See letter from Railroad Retirement Board Member to General Chairman dated August 15, 1986.) It cited Third Division Awards 4663 and 14224 as controlling.

Conversely, Carrier maintained that it could not properly restore Claimant to service, since without medical evidence that he was free from seizures, a potential "hazard" existed. Specifically, it pointed out that it was not provided with detailed medical evidence from his physician circa May 22, 1986, and further observed that the Railroad Retirement Board's disability annuity denial letter of May 23, 1986, advised that due to his history of seizures he should avoid working at heights or around dangerous machinery. In view of these facts, Carrier concluded that it had the right to withhold employees from service or restrict employees to positions they were qualified to perform, providing a determination was made that said employees met Carrier's physical standards. It referenced Third Division Awards 13984, 875, 6753 as controlling. Also see Second Division Awards 7901, 7766, 7364, and Third Division Awards 27823, 25417, and 22553.

In considering this case the Board concurs with Carrier's position. Firstly, as of circa May 22, 1986, the only evidence Carrier had regarding Claimant's condition was the Medical Report received on July 31, 1985. This report was the basis for his medical disqualification. Secondly, the "To Whom It May Concern" letter dated May 22, 1986, said that Claimant was able to return to work without restrictions, but no Medical Report was attached to it. Thirdly, the May 23, 1986 denial letter of the Railroad Retirement Board said that Claimant's condition was not severe enough to prevent performance of any regular and substantial work, but also noted that he should avoid working at heights or around dangerous machinery. Fourthly, the August 15, 1986 letter from the Labor Member of the Railroad Retirement Board reiterated the Retirement Board's May 23, 1986 letter regarding working in regular and gainful employment, but it did not mention heights or working around dangerous machinery. Upon this record, Carrier was not estopped from requiring a more detailed medical record.

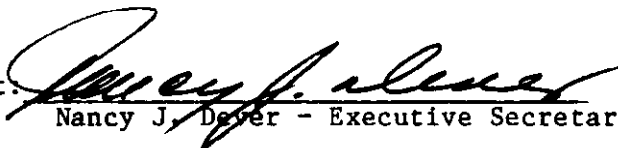
Inasmuch as Carrier had the right to request a more detailed Medical Report and also the right to establish physical standards, Claimant had an implicit obligation to ask his physician to submit a more comprehensive medical statement. Similarly, Carrier could have asked the physician to submit a follow up report on the May 22, 1986 letter. In view of this confusion, but also recognizing that Carrier specifically informed the General Chairman in its denial letter of August 1, 1986, that Claimant could not be approved to return to work until a detailed Medical Report was submitted, we will award Claimant backpay for the period of May 23, 1986, through August 8, 1986. This was the date the Organization responded to Carrier's last letter. From this point on, it would have been a simple step to obtain this additional substantive medical information.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.