

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(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 (CNWT):

(a) Carrier violated the current Signalmen's Agreement dated May 1, 1985, as amended, in particular Rule 11, and Rule 51.

(b) Carrier now be required to compensate Mr. A. Alexander for all time lost:

8-21-87	3 hrs o.t.	8-26-87	10 hrs s.t. - 1 hr o.t.
8-22-87	12 hrs o.t.	8-27-87	10 hrs s.t. - 2 1/2 hrs o.t.
8-23-87	10 hrs o.t.	8-28-87	12 hrs o.t.
8-24-87	10 hrs s.t. - 2 1/2 hrs o.t.	8-29-87	11 hrs o.t.

and on 8-30-87 8 1/2 hrs o.t. at the signalman's rate of pay." G.C. File C&NW-G-AV-133. Carrier File 79-88-2.

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 employee 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 Claimant was enrolled in the Carrier's substance abuse rehabilitation program. The Carrier's Medical Department was advised that the Claimant was not fulfilling his obligations under the program. The Claimant was thereupon taken out of service. The General Chairman was promptly advised of the Claimant's removal from service "for medical reasons." The Claimant was returned to service on August 30, 1987.

The Organization argues that the Carrier failed to meet the requirements of Rule 11 in that concurrence of the General Chairman was not received. Rule 11 reads in pertinent part as follows:

"EXAMINATIONS OR RE-EXAMINATIONS: Except as applied to new employees, or employees off duty account leave of absence or illness, or examination for advancement, employees required to take Book of Rules or similar examinations or re-examinations, or instructions, or physical examinations, will if possible, take same during regular working hours without deduction in time therefor. Where conditions do not permit such examinations being taken during regular working hours, or where the employee is required to travel outside of working hours, such time, including time traveling and waiting will be paid for at straight time.

Physical re-examinations will not be required, unless it is apparent that an employee's health and physical condition are such that an examination should be made. 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. In case a dispute arises, an examination will be made by an agreed-to competent doctor not an employee of the transportation Company, and the case disposed of on basis of his finding."

Part of the defense raised by the Carrier was to the effect that this was an "emergency" situation, as referenced in Rule 11. The Board finds that this was not such an "emergency" as would be the case in a traumatic injury or sudden disabling illness. While this supports the Organization in part, the Board concludes that the Claim should be denied on a different basis.

The Organization has placed undue reliance on Rule 11 in this particular instance. First, the reference to removal from service is within the general context of the Rule, entitled "Examinations or Re-Examinations." Second, the last two sentences must be read as a whole. The Board cannot accept that the Rule gives the General Chairman veto power over a decision to find an employee temporarily "unfit to perform his duties." While there is no agreement between the Carrier and the General Chairman, the Rule provides for examination by an outside doctor.

In this instance, the General Chairman was advised. Whether or not he formally "agreed" to the Claimant's removal, he clearly did not request a doctor's examination to resolve the matter.

In fact, all concerned were aware of the reason for the Claimant's temporary removal. It was his failure to continue to meet his obligations under the substance abuse rehabilitation program.

Because of the confidentiality of the information (which the Claimant was at liberty to release but did not), full details of the non-compliance were not immediately available. However, sufficient information was available so that the Carrier's Medical Director made a reasoned judgment that the Claimant was, at least temporarily, unfit for duty. The General Chairman was

promptly informed. It was then his option to agree or to request a doctor's examination for the Claimant. By doing neither, the General Chairman is not given the authority under Rule 11 to prevent the Carrier's exercise of reasonable medical judgment. In fact, the Claimant was returned to service nine days later, on August 30, 1987.

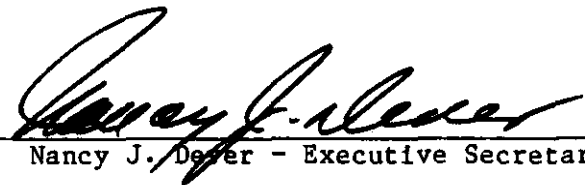
In its argument, the Organization relies on Third Division Award 26843 involving the same parties in similar circumstances. That Award can readily be distinguished from the matter here under review. In the cited Award, there is no indication that the General Chairman was notified of the Carrier's action. Further, the sustaining Award in effect offered the Claimant an opportunity to return to service, but without retroactive pay. In this instance, the Claimant had already been returned to service, and the only remedy sought is pay for time out of service.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1990.