

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 & North Western Transportation Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Company (CNWT):

On behalf of the Local Committee, Brotherhood of Railroad Signalmen, Local 130, that:

(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. Lemont Sandfort for all time lost for eight hours a day from November 2, 1987, for five days a week up to and including, until he is returned back to service. The time lost will be as follows:

The claim will be for 35 days at his rate of pay up until December 18, 1987, the day the claim is being written, and for all of his working days beyond this until he is returned to service. Carrier had Mr. Sandfort pulled out of service for medical reasons and held him out service in violation of Rule 11 which says, 'Except in an emergency, an employee will not be removed from service until it is agreed upon between the officer in charge of labor relations and the general chairman that the employee is unfit to perform his usual duties.' G. C. file C&NW-G-AV-136. Carrier file 79-88-5."

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 Claimant herein was removed from service on November 2, 1987 for medical reasons. As all concerned became aware, the "medical reasons" involved failure to remain in good standing in the Carrier's substance abuse rehabilitation program. He was restored to service on January 21, 1988.

The Organization argues that the Carrier removed the Claimant from service without the benefit of an Investigation under Rule 51 and/or without obtaining the Agreement of the General Chairman under Rule 11, which 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 conditions 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."

The Claimant was not removed from service as a disciplinary matter, so Rule 51 is inapplicable here. As to Rule 11, the record shows that the General Chairman was advised of the situation, but the General Chairman neither gave his assent nor requested examination by an independent physician.

This Claim is virtually identical to the matter reviewed in Third Division Award 28447 and the Board here reaches a similar conclusion as therein stated. The Board finds that there was no "emergency" as referenced in Rule 11. However, Rule 11 is not intended to give the General Chairman a veto power in every case of removal for medical reasons.

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 ever 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, which was not granted in Award 28447.

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 19th day of July 1990.