

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor

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

(1) The Carrier violated the Agreement when it failed and refused to comply with the General Chairman's written request dated May 19, 1988 to establish a Board of Doctors in accordance with Rule 86 to examine Mr. Charles Gilbert.

(2) The Carrier shall comply with Rule 86 and promptly establish a Board of Doctors to examine Mr. Gilbert."

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.

Claimant had been employed as a Carpenter until sustaining a serious back injury in an automobile accident in 1983. After surgery involving fusion of his lumbar spine, Claimant underwent rehabilitation for which his physician reported in 1985 and 1986 that he would be limited in the future to a job of a more sedentary type. Claimant's physician stated in October 1986, that Claimant "had a permanent partial disability of 20% of the body as a whole."

In March 1988, Claimant's physician indicated he was "able to return to his previous line of work without restriction" and Carrier's Medical Director concurred shortly thereafter. The record indicates that following an historical review of the Claimant's case, the Carrier's Medical Director reversed himself, giving rise to the instant dispute.

On behalf of the Claimant, the Organization requested a Board of Doctors be established pursuant to Rule 86 to determine Claimant's medical fitness to return to service as a Carpenter. Rule 86 states in pertinent part:

"The General Chairman will bring the matter to the attention of the Director of Labor Relations. He and the General Chairman shall then each select a doctor to represent them, each notifying the other of the name and address of the doctor selected. The two (2) doctors thus selected shall confer and if they disagree on the nature of the illness, they shall appoint a third doctor." (Emphasis added)

Following the conference between the two doctors, the Carrier's Director - Labor Relations asserted that "there is no disagreement between the physicians concerning the nature of Mr. Gilbert's illness." Claimant was not permitted to return to full unrestricted duty as a Carpenter.

Rule 86 of the Agreement has been complied with by the Carrier. The language requires a disagreement over the nature of the illness before a third doctor is appointed. In this case it has not been demonstrated that there exists any dispute over the 20% permanent partial disability which resulted from the spinal fusion. The fundamental dispute herein is that Claimant's physician believes he can return to his previous job without any restrictions due to his outstanding recovery, while the Medical Director disagrees. That is an issue of the Carrier's medical standards which is not appropriately resolved by a third physician (Second Division Awards 11217, 9499, 7901; Third Division Award 15367). The underlying dispute raises a serious issue for the Organization under the instant set of facts, but it cannot be resolved with this Rule. The language of Rule 86 has been complied with by the Carrier.

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 28th day of February 1991.