

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29734
Docket No. SG-29783
93-3-91-3-115

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSXT, Inc. (Former SCL):

Continuing Claim under Rule 50 of Signalmen's Agreement.

- (a) Carrier violates the Signalmen's Agreement, as amended, when it removed Signalman V. M. Thompson, ID 169490 from service.
- (b) Carrier should immediately restore claimant to service on Signal Gang 7x06, as Signalman with all benefits and rights unimpaired.
- (c) Carrier should compensate claimant eighteen dollars (18) per day based on a four day week beginning March 12, 1990.
- (d) Carrier should now compensate claimant two dollars (2) and forty seven cents (.47¢) per hour beginning March 12, 1990 based on ten hours (10) per day, four days per week." Carrier File No. 15-(90-26). BRS Case No 8213-CSXT.SCL.

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 employe with 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.

This case involves a situation in which the Claimant had entered Carrier's service in its Maintenance of Way Department in September 1974. While on furlough from his Maintenance of Way position, Claimant sought and acquired a position in Carrier's Signal Department effective February 6, 1989. Claimant performed service in the Signal Department from February 6, 1989, until March 8, 1990, when he advised his Supervisor that he was having difficulty performing his duties because climbing poles and working while standing on pole spikes for extended lengths of time irritated his knees, which had been previously injured in 1977.

On the basis of this information from Claimant, the Carrier's Medical Examiner examined and disqualified Claimant from performing service in the Signal Department. Claimant was informed of this action either on March 8 or March 10, 1990, depending on which version of the recounting is correct. Claimant subsequently observed a 5-day vacation period from March 12 through March 16, 1990. Effective March 19, 1990, Claimant accepted a recall from furlough to the Maintenance of Way Department and thereby forfeited his seniority in the Signal Department.

Thereafter, by letter dated April 9, 1990, the claim which is the subject of this dispute was initiated and progressed by the Organization through the normal on-property grievance procedures.

The Organization contended that Carrier, by its actions, violated the provisions of Rule 47-Discipline and Rule 50-Claims and Grievances. It contended throughout the on-property handling and in its ex parte Submission to the Board that "disqualification is the equivalent of discipline with a hearing and a violation of Rule 47." The Organization further argued in its ex parte Submission that Claimant's report to his Supervisor relative to his problem with his knees "was simply shop talk and was not that he could not climb or do his work." There was no evidence or argument advanced by the Organization relative to any alleged violation of Rule 50-Claims and Grievances.

The Carrier argued that the Organization has no standing before the Board in this case because the Claimant had forfeited

his Signalman's seniority on March 19, 1990, when he accepted recall to the Maintenance of Way Department, which date preceded the date of filing of this claim by the Organization. The Carrier further argued that disqualification by the Medical Examiner is not an act of discipline and no Hearing was required prior to removing Claimant from service. Carrier also argued during the on-property handling of this dispute at the Senior Manager Labor Relations' level that "the physical condition on which the Carrier's Chief Medical Officer based his disqualification as a Signalman are and must remain confidential."

On the basis of the relative convincing force of testimony and evidence in this case, the Board concludes that Claimant was properly removed from his Signal Department position by the Medical Department and such removal from service was not an act of discipline. However, Carrier is wrong if it believes that "the physical condition on which the Carrier's Chief Medical Officer based his disqualification as a Signalman are and must remain confidential." That determination by the Chief Medical Officer is the linchpin of Carrier's action in this case. It cannot be withheld from either the employee or his representative Organization. (It should be noted that the Claimant and the Organization were only interested in knowing why Claimant was disqualified. The Carrier misinterpreted such request as a request for Claimant's medical records. It is well established that a patient's medical records are confidential and may not be released to a third party without the patient's consent.) Fortunately in this case, the medical disqualification is an accepted fact which is attested to in the Organization's ex parte Submission to the Board, which Submission included a letter from the Claimant dated April 2, 1990, in which he outlined his visit to the Medical Officer on March 13, 1990, and the Medical Officer's advice to him at that time. But for that, Carrier would have been in dire straits by withholding such information from the representative Organization.

Carrier's argument relative to the standing of the Organization to initiate and progress this claim is neither well founded nor convincing. This claim had its genesis at a time when Claimant had a legitimate standing in the Signalmen's craft. While his subsequent act of accepting a recall to the Maintenance of Way Department may well have impacted on the extent of his Signalman's claim, the claim itself was properly initiated and progressed by the Organization. Carrier's argument to the contrary is rejected.

Because Claimant was properly removed from his Signalman's position on the basis of his own complaint and upon the determination and advice of the Chief Medical Officer, there was, in this case, no violation of Rule 47-Discipline, nor any other

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Rule of the Signalmen's Agreement. The claim as outlined supra is, therefore, denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.