

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30663  
Docket No. SG-30840  
95-3-92-3-690

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

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (former Louisville & Nashville):

Claim on behalf of G. F. Vincent, ID#188253, whose present assignment is at the Savannah Signal Shop.

- A. Carrier violated the agreement when it failed to timely return the Claimant to service following an illness.
- B. Carrier should now be required to make Claimant whole as follows:
  - 1. A total of one hundred and eighty-four (184) straight time hours should be paid to Mr. Vincent at his respective rate of pay for his position.
  - 2. Mr. Vincent should also be allowed any overtime which would have been available to him during this period of time as a result of this violation. This overtime should be paid at time and one-half at this respective rate of pay.

3. A total of twenty-three (23) days should be credited to Mr. Vincent in connection with days credited toward his vacation for the year 1992. Also any additional days that he may have been entitled to through overtime as a result of this violation.
4. Mr. Vincent should have monies in Railroad Retirement deductions credited to his record with the Retirement Board for the month of July as a result of this violation."

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.

Claimant is a Signalman at Carrier's Savannah Signal Shop with a 7:00 A.M. to 3:30 P.M., Monday through Friday tour of duty. There is no dispute that for some time prior to July 1, 1991, Claimant was absent from his position due to "a prolonged illness." On July 1, 1991, Claimant, with the help of his personal physician, completed paperwork to initiate his return to service. On July 8, "as a result of the records submitted" Carrier's Chief Medical Officer advised Claimant that he was not considered "qualified" to return to service. Later on that same date, Claimant delivered a statement from his personal physician stating that his medical

restrictions had been "lifted," and he was able to return to service. Claimant was ultimately returned to service on August 9, 1991, however, he was again disqualified on August 20 due to "continuing medical problems."

On August 17, 1991, the Organization initiated a claim contending that Carrier's "failure to promptly return Claimant to service" was in violation of Agreement Rule 15, "Work Week and Reduction of Hours," and Rule 16, "Rest Day and Holiday Service."

The Organization maintained that Claimant had "followed Carrier's guidelines for providing information regarding his medical status" and should have been allowed to return to work when Carrier was provided with a medical release on July 8. Carrier denied the claim submitting that Claimant should not have been returned to service at all, and Claimant's August 9, 1991 return to service was actually an "oversight" by the Medical Department.

On September 24, 1991, the Organization appealed Carrier's denial, which Carrier subsequently affirmed maintaining that Claimant's release for duty by his personal physician "did not meet the requirements for determining his medical qualification." Carrier went on to submit:

"While you state that Claimant's personal physician allegedly released him to return to work, we might remind you that only Carrier's Chief Medical Officer has that right. Claimant's personal physician may release him from his care, but knowledge of the job requirements dictate that approval to return to work come from the Chief Medical Officer. The rules cited by you do not support your contention that a rule violation occurred and none of those rules restricts the determination of Carrier's Chief Medical Officer in regard to personal qualifications. Furthermore, the rules cited by you do not supersede Carrier's obligation and responsibility with regard to providing a safe working environment for its employees."

The Organization predicated its primary argument on Carrier's "obligation to return Claimant to duty" on July 8, 1991, after being notified of his "non-restricted medical fitness for service." For its part, Carrier asserts that it has "the right to set medical standards for its employees and to ascertain that employees meet those standards."

So far as this record shows, Carrier was not remiss in its efforts to return this employee to service. Carrier examined Claimant's medical records, and determined that he was taking medication which made it impossible for him to safely perform his duties. It is firmly established that Carrier is within its

rights, and is, in fact, obligated to determine the fitness of its employees for service. It is also understood that Carrier should not prolong the process of medical validation unreasonably. We find no abuse of managerial discretion in this case.

It was incumbent upon the Organization to prove, with a preponderance of record evidence, that Claimant was improperly held from returning to service in a timely manner. The Organization was unable to sustain that burden. Therefore this claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.