

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31166
Docket No. CL-30967
95-3-93-3-40

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

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood (GL-10920) that:

- (1) Carrier violated the effective agreement when it withheld Mr. Richard A. Gleason from service following an illness without just cause;
- (2) Carrier shall compensate Claimant Gleason for November 2, 1991, and for each and every day thereafter until he was restored to service."

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 were given due notice of hearing thereon.

Claimant holds seniority as a Clerk with the Carrier from May 16, 1955. Upon return from a medical absence due to stomach surgery, Claimant, who had been off from September 9, 1991 until November 2, 1991, did not pass a vision exam by virtue of a deficiency noted in his right eye. He was instructed to see an eye doctor for updated glasses by certified mail dated November 5, 1991 from Dr. Pretter, the Carrier's physician, "as soon as possible" and represent himself for medical clearance. Claimant did this and was seen next on November 18, 1991 again meeting with non-approval

by the Carrier's medical staff. Dr. Pretter again wrote Claimant on November 25th to have his eye doctor issue a report to the Carrier explaining the condition of the right eye relative to continued service by the Claimant. This was done by Dr. Morimoto, Claimant's Ophthalmologist, on December 3, 1991. The specialist's report dated December 12, 1991 resulted in a clearance to return to service on December 18th making him out of service for 47 days which is the amount of the claim herein.

The Organization stresses the lack of a reasonable justification for its action toward Claimant in that he was off for the stomach surgery not the eye condition, a status he had worked with for some ten years previously.

The Carrier points out that the Claimant was re-examined pursuant to Rule 68 and that the other Rules allegedly breached are not pertinent because this was not a disciplinary action and he was not investigated for misconduct as befits those Rules. In fact, the 13 days it took Claimant to secure new glasses was his action and not delay caused by the Carrier's insistence on a medical clearance for return to service per Rule 68.

The Board has evaluated the relative positions and supporting cases offered by the Organization. We conclude that the written notices were within the Carrier's prerogative since a medical clearance protects all those who come in contact with or depend upon the safe performance of a colleague in the workplace. When the Claimant needed to walk outside at night in order to perform some of the duties he routinely was called upon by virtue of assignments he chose, the question concerning minimally correct vision in either eye is properly met by collaborating with Claimant's specialist. The days needed to arrange such office visits and issuance/mailing of reports did not form an intentional "withholding from service" as alleged.

It is true that the Claimant's overall loss of work time was brought about by the same eye condition he had coped with for ten years without impeding his performance. However, the timing of the request for both new glasses and the Ophthalmologist's opinion were consistent with the Carrier's practices and not, under this record, the result of any desire to penalize or discriminate against the Claimant.

The Carrier is not foreclosed from requiring minimal vision levels be met by the workforce even if the occasion of the examination revealing the deficiency is not related to the particular medical reason or condition which caused the Claimant to be off work.

AWARD

Claim denied.

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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 26th day of September 1995.