

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32530
Docket No. TD-32926
98-3-96-3-297

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"The Carrier, CSX Transportation ('CSXT') violated the current effective agreement between the carrier and the American Train Dispatchers Department (ATDD), article 3-(a) and article 12 thereof, in particular, when on February 1, 1995 and continuing until claimant is restored to work, when it refused to permit Train Dispatcher K. H. Akers to work the position to which he is regularly assigned, without good and sufficient cause, withholding him from service constitutes discipline for which no notice of charge was issued, nor an investigation held, as required by article 12.

The Carrier shall now compensate claimant Akers for all time lost beginning on February 1, 1995 and continuing until such time that he is returned to his position as a CSXT Train Dispatcher, inclusively, the Carrier shall additionally restore to claimant Akers his full sick pay allowance for which he was improperly paid beginning on February 1, 1995 until such time claimant Akers is returned to work."

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.

On February 1, 1995, Claimant received a letter from the Carrier's Chief Medical Officer which read in pertinent part as follows:

"I am in receipt of medical information from David Crawford, M.D. In that communication he feels that you are not capable of working in your current environment without some significant safety concerns. I have thoroughly reviewed your job with your supervisor and I had a separate telephone conversation with Dr. Crawford. As you know, your position is extremely safety sensitive. The company has an obligation to its employees and the public at large in terms of safety and the dispatching position is critical in this process. Considering the paramount safety issues and with the advice of your physician, I must find you medically unqualified to continue the duties of a dispatcher.

I would request that you contact Janet Meigs, Labor Relations, so that she can explore your other employment opportunities. I regret having to reach such a decision, but public safety must be our primary concern."

By letter of March 4, 1995, the Organization filed a claim in which it alleged that the Carrier had violated the Agreement by holding Claimant out of work without sufficient cause, and, thus imposed discipline without issuing notice of charges or holding an investigatory Hearing. The Organization demanded that Carrier compensate Claimant for all time lost and continuing until he is restored to his position as a CSXT Train Dispatcher, and that his sick pay allowance be restored until such time as he is returned to work. In its denial of the claim the Carrier pointed out that Claimant was withheld from service due to medical disqualification by the Chief Medical Officer, not for disciplinary reasons.

During handling on the property, the Organization demanded documentation from Claimant's Supervisor concerning the basis of Claimant's disqualification, and protested that, since Claimant had not been directly examined by Carrier's Medical Officer, the latter had no basis upon which to withhold Claimant. Thus Claimant had been unfairly disciplined.

For reasons not clear on this record, Claimant apparently declined to contact the Labor Relations Officer to inquire about "other employment opportunities." Nor did the Organization, during handling on the property, invoke the provisions of Article 15 - PHYSICAL DISQUALIFICATION of the Agreement. That Article reads as follows:

"In the event a dispute arises with respect to whether physical disqualification of a train dispatcher is justifiable, the dispute shall be promptly referred to a panel of two physicians, one selected by the train dispatcher and one selected by the Company, who shall attempt to reach agreement as to the train dispatcher's fitness to continue in service. Should the two be unable to agree they shall select a third physician, and a majority of the three physicians shall render a binding decision as to the train dispatcher's fitness. The physicians shall have the right to examine the train dispatcher prior to making their decisions. An adverse decision to the train dispatcher shall not debar reexamination should there be a subsequent improvement in his condition. The fees and expenses of the physicians selected by the respective parties shall be borne by them; those of the third physician shall be divided equally."

At no time did the Organization offer evidence or even a substantive objection to counter the Carrier's position that Claimant should be medically disqualified from his position. In demanding information from the Senior Director of Dispatching regarding Claimant's alleged medical condition, the Organization was requesting information to which the Director is generally denied access. Had the Claimant wished to acquire such information to buttress the Organization's case, he would have had to contact the Carrier's Medical Officer himself. There is no indication on this record that he made any attempt to do so.

The Organization has left the Board with no alternative but to deny this claim, as it is presented. The Board notes, however, that the provisions of Article 15, cited above, should still be available to Claimant, despite the approach taken by the

Organization, if he wishes to attempt to return to work as a Carrier employee. Because he declined to avail himself of the chance to explore "other employment opportunities," as noted in Carrier's letter of February 1, 1995, Claimant is not entitled to backpay.

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 25th day of March 1998.