

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33971
Docket No. SG-34748
00-3-98-3-450**

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Southern Pacific)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Co. (former Southern Pacific):

Claim on behalf of R.H. Carr to be made whole for all time and benefits lost when he was not returned to service after he was released by his physician on June 15, 1995, account Carrier violated the current Signalmen’s Agreement, particularly Rule 69, when it continued to hold the Claimant out of service on a medical disqualification. Carrier’s File No. SIG M95-1. General Chairman’s File No. SWGC-1186. BRS File Case No. 10661-SP.”

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.

The Claimant, on October 2, 1992, injured his right shoulder and knee while at work. While the shoulder injury did not appear to be serious, he did end up on a medical leave of absence. On March 3, 1993, the Claimant was released to full duty with no restrictions.

The Claimant was furloughed in September 1993. Subsequently, he was recalled to service but he presented medical evidence that he could not perform the work he would be required to do. On June 14, 1995, the Claimant faxed to the Carrier a simple note from his doctor with various boxes marked indicating the Claimant could resume service June 15, 1995. On the request of the Carrier, more information was requested of the Claimant's condition and that information was furnished June 28, 1995. That evaluation concluded with no clear cut release to full duty. The Claimant's doctor stated, in part:

“ . . . The patient can return to a heavy work situation. He will not necessarily hurt himself, although he may cause himself discomfort and there may be some activities that he is unable to do”

The Claimant's doctor indicated concurrence with the orthopedic surgeon who operated on the Claimant's shoulder. That surgeon stated:

“I do suspect that he (Claimant) will require some adjustment in his working activities. He may require a transfer into a new area of employment.”

Neither doctor released the Claimant to resume work unconditionally. The Carrier then required the Claimant to undergo a further examination which was done at the Salem Hospital. That report stated that:

“Limitations therefore are in (Claimant's) endurance ability to perform difficult tasks with his right upper extremity 'over the long haul'. It is recommended that he not return to his job”

Despite the reports, the Organization still insisted the Claimant had an unrestricted release to resume service, and on August 30, 1995, filed claim now before this Board.

The Carrier on October 23, 1995, wrote Doctors Brenneke and Marble (Claimant's doctor and his orthopedic surgeon) asking that they agree on a third doctor who would examine the Claimant and render a decision upon whether he could resume his duties without restrictions.

That doctor examined the Claimant on November 20, 1995, and on November 21, 1995, rendered his opinion that:

"... It would be my opinion that (Claimant) can return to his regular work as a signalman without restrictions"

The Claimant was medically released to resume service on November 28, 1995, without restrictions.

The Organization contends the Claimant had an unconditional release in June, and should have been returned promptly to the position he held after receiving his doctor's return to work slip.

This Board does not agree. The Carrier has the fundamental right to seek assurances that an individual employee can do the work required of his position. To do less would be potentially harmful, not only to the employee returning, but to others he may be working with, and there is also the need to lessen its financial expense should the Claimant return to service and then aggravate his old injury.

It is significant to note that while this dispute was pending on the property, the Carrier made an offer to establish a position in its Roseville Shops that required much less physical activity, but the Organization resisted the offer contending that he was to return to his former occupation.

In order for the Organization to be successful on the Claimant's behalf, it would have to show that the Carrier's hesitation in immediately returning the Claimant to service shortly after receipt of his own doctor's return to work slip was furnished them was arbitrary, capricious or unreasonable. This it has failed to do.

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 28th day of March, 2000.