

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37086
Docket No. SG-37591
04-3-02-3-706

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
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP):

Claim on behalf of F. J. Mancini, for all lost time starting July 2, 2001, and continuing until the Claimant is returned to work, account Carrier violated the current Signalmen’s Agreement, particularly Rules 68 and 70, when it refused to allow the Claimant an unjust treatment hearing due to Carrier’s refusal to let him return to work. Carrier’s File No. 1286873. General Chairman’s File No. UPGC-1058. BRS File Case No. 12258-UP.”

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 genesis of this claim is found in the decision of Award 6 of Special Board of Adjustment No. 1132 which ruled as follows:

"Given the background of this Claimant, this Board finds that the Claimant shall be reinstated to service, but without back pay, once he passes a physical examination. The period that the Claimant was off shall be considered a lengthy disciplinary suspension for his violation of the rules.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay, once he passes a Carrier-administered physical examination. The period that the Claimant was off shall be considered a lengthy disciplinary suspension."

Following the decision of SBA 1132, the Claimant was conditionally medically clear to work with the following 120-day restrictions:

- "1. Avoid driving company vehicles.
2. Avoid climbing of ladders and/or poles.
3. Avoid operating power saws.

Employee is to provide updated medical information after mid-September 2001 neurology follow up."

Because there were no Signalman positions available to the Claimant with the medical restrictions as set forth by the Claimant's personal physician and the Carrier's Medical Examiner, he was not immediately returned to service. This withholding of the Claimant from service prompted the Organization to request an Unjust Treatment Hearing on the Claimant's behalf. This request was based on the provisions of Rule 70 of the Agreement which reads as follows:

"RULE 70 - UNJUST TREATMENT

An employee who considers himself unjustly treated, other than covered by these rules, will have the same right of hearing and appeal

as provided in Rule 68 B if written request is made to his immediate supervisor within ten (10) calendar days of cause of complaint. Failing to dispose of the complaint in such hearing, appeal may be taken in accordance with Rule 69.

Any complaint made by one employee against another will be made in writing."

The Carrier denied the Organization's request for an Unjust Treatment Hearing on the basis that there was no disagreement between the medical opinions expressed by the Claimant's personal physician and the Carrier's Medical Examiner. In addition, the Carrier contended that medical conclusions and decisions were not proper subjects for an Unjust Treatment Hearing. The Carrier's denial of the Unjust Treatment Hearing request was pursued through the normal on-property grievance procedures and is now before the Board for final determination.

The Claimant's personal physician concluded and reported in the "mid-September 2001" follow up referenced in the conditional medical opinion referenced supra, that the Claimant was as of that time under no further medical restrictions and was medically cleared to return to full duties. Thereupon, the Claimant was returned to full service.

The Board's determination in this case is limited to whether there was a proper basis for the Organization's request for an Unjust Treatment Hearing.

The Board concludes that there was no proper basis in this case for conducting an Unjust Treatment Hearing. There was no disagreement between the medical experts whose responsibility it was to determine the Claimant's medical condition. There is absolutely no evidence in this case record to contradict the medical conclusion reached by both the Carrier and the Claimant's own physician relative to the temporary restrictions that were placed on the Claimant.

There is no evidence to support the Organization's contention that the Claimant was unjustly treated when the medical opinions as set forth by all of the concerned medical experts were applied to the Claimant. When the medical experts removed the restrictions, the Claimant was restored to full service. Nothing could possibly have been accomplished by non-medical personnel conducting an Unjust Treatment Hearing.

Medical opinions are properly within the domain of medical experts - not non-medical people conducting Unjust Treatment Hearings. In short, medical determinations are not proper subjects for Unjust Treatment Hearings.

The Carrier's determination that there were no Signalman positions available to accommodate the medical restrictions that had been placed on the Claimant was neither unreasonable nor disproven by any probative evidence. The Carrier's denial of the request for an Unjust Treatment Hearing was neither arbitrary nor discriminatory. As was properly held in Award 8 of Public Law Board No. 6302:

"Carrier is charged with the responsibility for the safety of the employees and its decision to withhold employees for medical reasons should not be second guessed by a reviewing tribunal. The Board should overrule such a decision only where it is shown to have been made in bad faith or to have been arbitrary or capricious."

No showing of bad faith or arbitrary or capricious action has been made in this case. Therefore, the claim is 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 21st day of July 2004.