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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37304
Docket No. SG-37563
04-3-02-3-659

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Burlington Northern and Santa Fe Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe (BNSF):

Claim on behalf of S. J. Hunt, II, for reinstatement to service payment for all lost time plus skill differential and credit for employment and seniority rights as if he had been working, starting 60 days prior to this claim and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rule 19, when it failed to return the Claimant to service after being released by his doctor to return to full service, in a letter dated March 31, 2000. Carrier's File No. 35 01 0063. General Chairman's File No. 01-099-BNSF-188-SP. BRS File Case No. 12259-BNSF.”

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, who holds seniority on the Seattle Seniority District, sustained a severe traumatic brain injury in a motor vehicle accident on December 2, 1999. On April 3, 2000, the Claimant's personal physician released the Claimant for full duty, but indicated that he should be closely supervised because he was experiencing "coordination and cognitive function problems." The Carrier determined that it could not allow the Claimant to return to work while he suffered from these maladies.

The Organization initially filed a claim on behalf of the Claimant as a result of the Carrier's refusal to reinstate the Claimant, but withdrew its claim after the Claimant settled his discrimination charge against the Carrier. The Settlement provided as follows:

"This release does not affect any right of Hunt to pursue his pending claim under Rule 19 of his collective bargaining agreement ("CBA") for reinstatement to service without back pay. It is understood between the parties that Mr. Hunt will be required to attend medical examinations as part of the procedure for reinstatement, including an examination by a doctor chosen by BNSF and, if necessary, an independent Medical Examiner. . . ."

The Carrier designated doctors at the University of Washington School of Medicine and the Claimant designated his personal physician to perform the re-examination under Rule 19. On March 12, 2001, physicians at the University of Washington prepared a letter in which they indicated:

". . . We do feel strongly that patients with Mr. Hunt's medical history and test performance do need to undergo an extended work trial evaluation and practice experience in a protected setting before final decisions are made about their ultimate level of capability."

On May 31, 2001, an agreement was reached in which the Claimant would undergo an evaluation to assess his fitness to return to work as a Signaller.

The Organization filed the instant claim for reinstatement on September 14, 2001.

The Carrier was unable to proceed with the evaluation until the Claimant executed the necessary release of medical information. He eventually executed his release and pursuant to an examination, he was advised on March 19, 2002 that his personal physician and the University of Washington doctors had agreed upon the following workplace activity restrictions:

"No field work

Limit work to repetitive tasks in a structured environment such as a
Signal shop

Work under regular, consistent supervision"

On March 19, 2002, the Carrier advised the Organization that the only signal facility that could meet the Claimant's restrictions was the Springfield, Missouri, Signal Shop. The Carrier informed the Organization that an agreement would have to be reached because the Claimant had no seniority on the Springfield District. However, no agreement was reached to dispatch the Claimant to the Springfield Signal Shop.

On May 28, 2002, the General Chairman informed the Carrier that the Claimant should have the right to return to work in the Seattle Shop when a position becomes available. The General Chairman also asked that the Claimant be returned to work in another field. The Carrier rejected this request, indicating that the only appropriate position available was that in the Springfield Signal Shop.

Because the parties could not reach agreement, the Organization listed the matter to the Board for adjudication.

The issue is whether the Carrier acted appropriately in dealing with the Claimant. The Carrier believes that it acted appropriately while the Organization asserts that the Claimant is entitled to other positions.

The Organization argues that the Carrier violated Rule 19 when it failed to return the Claimant to service following his injury. The Organization contends that the Carrier should now reinstate the Claimant and compensate him for all time lost as if he had been working, beginning 60 days prior to the date of the instant claim and continuing until such time as the Claimant is returned to duty.

Conversely, the Carrier takes the position that it acted properly. According to the Carrier, it acted in accordance with Rule 19. The Carrier determined that the only position available to the Claimant was in the Springfield Signal Shop. Further, the Carrier proved that the Claimant was not capable of returning to the Seattle Signal Shop due to his disability, in conjunction with the tasks performed at the Seattle Signal Shop. The Carrier contends that even if the Claimant could work in the Seattle Signal Shop, there were no positions available to him based on his seniority.

The Board finds that it must agree with the Carrier. The burden in this matter falls on the Organization to prove that the Carrier erred when it did not offer the Claimant a position at the Seattle Signal Shop and when it attempted to offer him a position in the Springfield Signal Shop. We find that the Organization has been unable to meet that burden. A review of the record discloses that there is insufficient evidence to suggest that the Carrier's determination of where the Claimant could work was unreasonable. Thus, the Organization failed to establish that the Carrier violated Rule 19.

In sum, we find that the Organization has been unable to meet its burden of proof in this matter. Thus, we find that the claim must be denied.

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 21st day of December 2004.