

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37533
Docket No. SG-37338
05-3-02-3-331

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 Signalman R. H. Diehl, Sr. for all time lost at the Signalmen's rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 65, 69 and 80, when it improperly disqualified the Claimant in a letter received February 5, 2001, and caused the Claimant to suffer monetary losses as a result of the disqualification. Carrier's File No. 1264852. General Chairman's File No. N80-163. BRS File Case No. 12009-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.

At the time this dispute arose, Claimant R. H. Diehl, Sr. was assigned as a Signalman in the Carrier's Commuter Operations around Chicago, Illinois. On January 22, 2001, the Claimant's personal physician advised the Carrier's Health Services Department that the Claimant could not be in a hazardous, unsupervised position. On February 1, 2001, the Carrier disqualified the Claimant from working his Signalman's position because of these restrictions. The Carrier maintains that it could not accommodate these restrictions because Claimant's position as a Signalman subjected him to both "hazardous" and "unsupervised" situations.

On March 5, 2001, the Organization requested the Health Services Department to give the Claimant a physical re-examination pursuant to Rule 65B. On March 21, 2001, the request was declined. According to the Carrier, Rule 65 was inapposite because there was no disagreement between the Claimant's physician and the Health Services Department regarding the Claimant's physical condition. Nevertheless, the Health Services Department said it would review any new medical information the Claimant wished to furnish.

On March 5, 2001, the Organization also filed a claim on behalf of the Claimant. It was the Organization's position that the Claimant suffered a loss of earnings when the Health Services Department imposed more restrictive conditions on his return to work than were imposed by his physician.

The Carrier denied the claim contending that it could not accommodate the Claimant's medical restriction because Signalmen are required to work on or near railroad tracks; in or adjacent to busy roads; and on ladders, bridges and other potentially hazardous situations.

The Organization appealed the claim maintaining that the Carrier violated Rule 69 when an undesignated Carrier officer denied the claim. The Organization further argued that inasmuch as the Claimant worked under the direction of a Leading Signalman, he rarely worked alone or unsupervised. Moreover, because the Claimant worked in accordance with numerous Safety Rules, he would be in no danger even if he were unsupervised.

The Carrier denied the appeal and the matter was progressed to the Board. The Claimant was returned to service on May 14, 2001.

Initially, the Board wishes to note that there is no requirement in Rule 69 - Claims and Grievances for claims to be denied only by the Carrier officer with whom it is filed or appealed. Rather, the Rule merely requires claims to be disallowed by the Carrier within the prescribed time limits. The Carrier denied the initial claim within the time limits set forth in Rule 69. Therefore, the claim was not improperly handled, notwithstanding the Organization's contention.

Rule 65 - Physical Examinations allows employees who believe that their condition does not justify removal from service or restriction on their right to service to request a re-examination. An employee may be given further examination if his/her physician and the physician designated by the Carrier fail to agree on his/her disqualification.

In the instant claim, there was no disagreement between the Claimant's physician and the Health Services Department. Indeed, the Health Services Department based its determination on the restrictions imposed by the Claimant's physician that he could not be in "hazardous" or "unsupervised" situations. Contrary to the Organization's contention, the Health Services Department did not impose additional restrictions that prevented the Claimant from returning to work before May 14, 2001.

The Carrier's disqualification of the Claimant between February 1 and May 14, 2001, was not arbitrary or unreasonable. There was a rational basis for the disqualification, namely the restrictions imposed on the Claimant by his personal physician. The Carrier's determination that it could not accommodate those restrictions in light of the Claimant's duties as a Signaller was not arbitrary or unreasonable. Therefore, his claim for lost earnings between February 1, and May 5, 2001, 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 23rd day of June 2005.