Award No. 15882
Docket No. SG-15197

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement and instructions of the Medical Department when Mr. J. E. Baker was not permitted to return to duty as an Assistant Signalman until August 5, 1963.

(b) Mr. Baker be allowed eight hours' pay at his applicable rate, each working day, commencing 60 days prior to August 3, 1963, until August 5, 1963, while junior employes in the Assistant's Class were working.

EMPLOYES' STATEMENT OF FACTS: The Claimant in this dispute, Mr. J. E. Baker, was employed as a Signal Helper in October, 1950. He subsequently advanced to Assistant Signalman and Signalman positions.

On or about October 1, 1962, he was reduced from a Signalman position to an Assistant Signalman position, allegedly because of his inability to climb wooden poles and perform lineman's work. Later that month he was held out of service on instructions from the Medical Department, on the basis his weight (approximately 307 pounds) was excessive.

Claimant advised the Brotherhood that he was 74 inches tall, and weighed 270 or 280 pounds, when he was first employed as a Signal Helper, and that he has always been in good physical condition.

Attached hereto, as Brotherhood's Exhibit No. 1, is a Doctor's report about Claimant's physical condition on February 5, 1963.

The General Chairman had various discussions about this matter with the Carrier's Manager Labor Relations and Director of the Medical Department.

As shown by Brotherhood's Exhibit No. 2, Carrier subsequently agreed that Claimant would be permitted to exercise his seniority rights as a Signal Helper, provided he reduced his weight to 300 pounds.

factors: His release by the Medical Department and the necessary assurance to Assistant Signal Engineer Maynard that he could and would climb wood poles. Mr. Maynard handled this promptly upon his return from vacation. When he received this assurance, Mr. Baker was permitted to return to duty.

The claim for 60 days' pay for Mr. Baker is without merit. This claim as presented would start on June 3. There was no employe junior to him until July 17 when he was given a release by the Medical Department to work as an Assistant Signalman."

(Carrier's Note: The claim here is basically defective; as the Division Engineer points out, "the claim for 60 days' pay for Mr. Baker is without merit. This claim as presented would start on June 3. There was no employe junior to him until July 17 when he was given a release by the Medical Department to work as an Assistant Signalman.")

OPINION OF BOARD: In October 1962 the claimant was held out of service due to his excessive weight (approximately 307 pounds). The Carrier's medical director later advised him that "when his weight has been reduced to approximately 265 pounds, he can again apply for a return to duty notice as an Assistant Signalman."

The claimant applied for a return to duty notice on July 16, 1963. His weight was found to be below 250 pounds, and the Carrier's physician issued him a return to duty card on July 17. The Carrier's division engineer learned of this development, apparently through regular internal channels, on July 22. The division engineer then wrote to Assistant Signal Engineer Maynard about this matter, but due to Maynard's being on vacation until July 29, the claimant was not returned to duty until August 5.

The Employes contend that the claimant had actually reduced his weight to 265 pounds (the weight required by the Carrier) as early as May 15, 1963. No proof was offered to support this assertion. What is more, the Carrier's medical director had imposed upon the claim— and reasonably so — the affirmative duty of making application for a return to duty notice when his weight was down to 265 pounds. It was the claimant's obligation to look after his own interests. If he waited for two months, after his weight was down, to apply to the Carrier to return to work, he has only himself to blame for the delay. The Carrier had not duty to keep itself advised of developments in the claimant's efforts to lose weight.

Once the claimant had applied for a return to duty card, the Carrier's medical department took one day to examine him and issue the card. There is no showing that this was an unreasonable delay.

It next took the Carrier from July 17 until July 22 for its medical department to advise its division engineer that the claimant should be returned to work. Again, there is no showing that this was an unreasonable administrative delay. This Board notes that such period of delay embraced a weekend, that the claimant apparently made no efforts of his own to advise the proper administrative officials of his new eligibility for work, and finds that this delay from July 17 until July 22 was not unreasonable.

It next took from July 22 until August 5 for the Carrier to put the claimant to work. The explanation for the delay is that Assistant Signal Engineer

Maynard was no vacation. The Board finds this to be insufficient to justify such a delay. Surely, the Carrier is able to, must, and does function when this assistant signal engineer is on vacation. The Board finds no justification for the Carrier's not working the claimant commencing July 23, the day after the Carrier's medical department's action had been brought to the attention of those persons whose duty it is to run the railroad.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

The claim is sustained, for the period commencing July 23, 1963 and ending August 5, 1963.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1967.

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