NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21136
THIRD DIVISION Docket Number CL-21219

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline, and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Pittsburgh & Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7870) that:

(a) The Carrier violated the Rules Agreement, effective September 1, 1946, when it disqualified Traveling Agent H. F. Johnston from performing any service on the Pittsburgh and Lake Erie Railroad.

(b) H. F. Johnston be restored to active service of the Pittsburgh and Lake Erie Railroad Company and paid for all time lost from October 16, 1972 until such restoration is made effective.

OPINION OF BOARD: Claimant alleges a violation because Carrier refused a restoration to duty after his physician certified him to be physically capable of working.

The Carrier maintains that the findings of its Chief Surgeon during return to service examination, as well as those of the Claimant's personal physician support the disqualification from employment at the time.

Findings from the Chief Surgeon's report of the October 16, 1972 examination state:

> "...he has sufficient degenerative disc and arthritic changes in his cervical and lumbar spine that he will be unable to perform his assigned duties."

The Claimant's physician stated:

> "As mentioned above, Mr. Johnston did not report for treatment. Nor did he appear to need any. It was my impression that whereas he had a moderately advanced osteoarthritis of the thoracic and lumbar spine, he was fairly well adjusted to the same and was not having symptoms of any degree or any disability therefrom. It was my impression that he was able to do the work of a traveling agent. However in view of his age and the arthritis in his back he should avoid heavy lifting or strain upon his back."

Although there is some dispute regarding the duties of a Traveling Agent, Carrier insists that there is substantial evidence presented which shows that the required activity could aggravate a back injury (i.e., climbing side ladders on cars, walking on industry tracks), and both physicians support the conclusion that Claimant should be restricted from those activities.

Although the Agreement does not contain a specific rule in this regard, Claimant cites numerous Awards to support the position that Carrier should have agreed to a solicitation of a third (Neutral) physician's opinion.

In its Ex Parte Submission to the Board, Carrier recognizes that Awards of all four Divisions of this Board have recommended a three-doctor Board in case of conflicting medical opinions, and states that it is not averse to such a procedure when it is warranted.

We are inclined to agree that the record does not support a conclusion that a neutral opinion was necessary in this case. This conclusion is strengthened by the letter which Claimant wrote seven days after the return to service examination:

"...though in excruciating pain, I would have tried to work..."

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1976.