

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22281
Docket Number CL-22110

Rolf Valtin, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8396, that:

"(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it failed and refused to compensate Mr. E. L. Hepner in accordance with Rule 62 thereof each work date from October 27, 1975 to and including December 12, 1975; and,

(b) The Southern Pacific Transportation Company shall now be required to compensate Mr. E. L. Hepner at the pro rata rate of his assignment, No. 307 Crew Dispatcher, each work date as above set forth."

OPINION OF BOARD: The claimant entered the Carrier's service in September, 1947. At the time of the events here in question, he was a Crew Dispatcher. He held position 307 in that capacity.

On Friday, October 24, 1975, the claimant was notified by the Carrier that it was taking him out of service under Rule 62. The claimant complied. Monday, October 27, 1975, was the first work day lost by him by virtue of the instructions. In the ensuing approximately seven weeks, he underwent a series of medical-psychiatric examinations. Friday, December 12, 1975, was the last work day lost by him by virtue of his out-of-service status. In being restored to service, beginning with Monday, December 15, 1975, he was returned to his regular Crew Dispatcher-Position 307 job.

Rule 62 is titled "Physical Condition - Panel of Doctors." Its opening portions read as follows:

"(a) A regularly assigned employee, including an employee assigned to the Guaranteed Extra Board, who is ordered by an officer of the Company to report for physical examination and found to be in a satisfactory physical condition that would have enabled him to continue in service without interruption shall be compensated as follows to the extent of actual time lost while taking such physical examination, plus reimbursement for actual necessary expenses while away from assigned headquarters:

Regularly Assigned Employees

Basic rate of position held at time ordered to take physical examination."

The Organization submits that this set of regulations, applied to the facts in the case, clearly renders the claim advanced in the Statement of Claim a valid claim. (As shown by our statement of the facts, the claim correctly identifies the out-of-service period.)

The Carrier resists the claim substantially on the grounds that it did not act arbitrarily and that, instead, it had good cause for taking the claimant out of service. It points to the fact that the claimant had previously suffered from alcoholic problems and that, at the time in question, there were repeated indications of a mental disorder. Additionally, as part of its rebuttal statement to the Third Division of the Board, the Carrier submits that the medical-psychiatric advice fell short of unequivocally releasing the claimant for return to his regular job and that, as things subsequently turned out, the claimant was not in fact capable of coping with the demands of the Crew Dispatcher job.

We see no proper choice but to uphold the Organization.

Two things are to be granted. One is that the record supports the Carrier's basic contention that it acted in good faith and with good reason in taking the claimant out of service. The other is that, owing to the nature of the diagnostic undertaking, the out-of-service period in the present instance presumably was longer than would normally be true.

Neither of these considerations, however, can be allowed to govern. For the facts are that the claimant was taken out of service under Rule 62 and that, on completion of the medical-psychiatric examinations, he was returned to his regular job. We think it is clear that an employee is to be compensated where he is found to be in satisfactory physical condition, i.e., that this is the determinative fact and that one is not to speculate as to whether the employee was physically or mentally capable of performing his regular job in the period in which the medical and/or psychiatric verdict was pending. This is made the more clear when considering those portions of Rule 62 (not here quoted) which provide for the lack of compensation in opposite-result situations.

We reject the Carrier's additional contention on two grounds: 1) it came too late, i.e., it embodied evidence which had not been submitted on the property; 2) the subsequent events cannot be taken as altering the fact that the claimant was returned to his regular job upon completion of the medical-psychiatric examinations.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1979.