

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22854
Docket Number CL-22731

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8706)
that:

1. Carrier acted in an arbitrary, capricious and unjust manner and violated the agreement between the parties when on September 30, 1977, it suspended telegrapher/clerk Patricia Scheirmann from service of the Carrier. In view of the foregoing arbitrary, capricious and unjust action of the Carrier it shall now be required to:

- (a) Restore telegrapher Scheirmann to service of the Carrier with all seniority, vacation and other rights unimpaired.
- (b) Pay employee Scheirmann for all time lost commencing with September 30, 1977, and continuing until employee Scheirmann is restored to service.
- (c) Pay employee Scheirmann any amount she incurred for medical or surgical expense for herself or dependents to the extent that such payment would have been paid by Travelers Insurance Company under Group Policy GA-23000 and in the event of the death of claimant Scheirmann, pay her estate the amount of life insurance provided under said policy. In addition, reimburse her for premium payments she may have made in the purchase of substitute health, welfare and life insurance.
- (d) Pay telegrapher Scheirmann interest at the rate of 10% compounded annually on the anniversary of this claim for amounts due under Item (b) above.

OPINION OF BOARD: In our review of this dispute, we do not find that Carrier violated the Agreement when it removed Claimant from service pending a dispositive assessment of her physical condition.

Her statements to the Trainmaster on September 26 and 28, 1978 respectively were indeed serious and potentially posed detrimental consequences if left unclarified. This is particularly true regarding her explicit apprehensions that someone would get killed if she were required to perform telegrapher duties.

Similarly, when we examine the precise chronology of events during the September 29 through November 7, 1978 period, we do not find that Carrier prolonged her return to service. It was certainly permissible for Carrier to request further elaboration of her physician's October 3, 1978 letter to insure that she was physically fit for duty and we will not interpose a lay medical judgment in lieu of this determination.

From October 6, 1978 through October 19, 1978, the burden of timely compliance vested exclusively with Claimant's physician, who was then responsible for preparing a more detailed report of her physical status and thus we cannot attribute any attendant delay to Carrier. The Employer, as a publicly regulated Carrier, was entitled to a comprehensive analysis of her condition. When the October 19, 1978 medical report was sent from Euless, Texas to the Medical Consultant in Clayton, Missouri, it was followed up with several consultative discussions between this official and Claimant's physician. There was no determination made during the October 19-31, 1978 period that she was assuredly fit for service, nor any indication that Carrier prolonged this phase of the medical evaluation. The Medical Consultant directed the Company physician, who was located at Fort Worth, Texas, to conduct a return to work physical examination, as a concomitant and reasonable precaution on October 31, 1978, which was promptly observed that same day. An additional week ensued before Carrier definitively determined that she was physically capable of returning to work. There was no unreasonable hiatus during this time considering the postal distance between Fort Worth, Texas and Clayton, Missouri and the imperative need to review carefully this report and the October 19, 1978 medical report as clarified by the subsequent consultative discussions.

If Carrier had waited an additional week or more beyond November 7, 1978 before returning her to service, our prior holding in Third Division Award 22037 would have been applicable to this dispute. Unlike that Award where Carrier waited too long before notifying the Claimant that she was fit to return to service, the Claimant in this instance wasn't fully approved by Carrier's Medical Consultant to return to work until November 7, 1978. This was not an unreasonable notification given the circumstances of this dispute. We do not find that Carrier prolonged Claimant's return to service or acted in a capricious and restrictive manner that was contrary to its right to determine the physical fitness of its employees. We will deny the claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.