

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24933
Docket Number SG-25007

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Seaboard System Railroad

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

On behalf of C. B. Neubert, Oak Ridge, Tennessee, for pay September 1, 1981 to July 7, 1982, account Carrier held him out of service for physical condition after his personal physician released him for return to work. [Carrier file: 15-46(81-1010)]

OPINION OF BOARD: Claimant C. B. Neubert occupied the position of Signal Maintainer when on May 21, 1981 he suffered a heart attack. Claimant's personal physician advised the Carrier that Mr. Neubert could return to work on September 1, 1981 and do so safely. The dispute in the instant case was brought by the Organization on behalf of Claimant Neubert because the Carrier's Medical Department on September 3, 1981 did not authorize his return. On November 5, 1981, the Organization maintained that since Claimant's "personal physician released him to return to his regular assignment and no Carrier doctor has examined Mr. Neubert, he should now be permitted to return to his regular assignment and be paid for all lost time beginning September 1, 1981."

During the progression of the claim on property the Carrier's medical staff reviewed existing information about Mr. Neubert's physical condition and the requirements of his employe position and concluded (December 2, 1981) that "for the protection of the Claimant himself as well as the Carrier, the Claimant did not meet the physical standards required to perform service on his former assignment as a signal maintainer." In the correspondence as exchanged on property, the instant case revolves around the issue of whether Carrier's position and action in the case at bar was reasonable.

A review of the record shows ample evidence present to substantiate the reasonableness of the Carrier's action. In the instant case this Board firmly holds that the Carrier is ultimately responsible under the Federal Employers Liability Act and by way of numerous court decisions to maintain adequate standards of safety, by way of physical requirements for its employes to satisfy the conditions of their employment. In the mind of this Board the Carrier maintains at its own expense a medical force whose expertise involves a clear knowledge of the job requirements. As such, the Board weighs more heavily on the Carrier's physicians and assumes that the Claimant's personal physician, while acting in good faith

may not be aware of what the Claimant's employment position entails or may be acting upon assumptions which include faulty information. Nothing in the record as handled on property shows clear evidence that any of the Claimant's personal physicians understood the nature of the Claimant's physical work requirements when they indicated Signal Maintainer Neubert was fully capable to return to work. Nor is there any evidence in the record as handled on property to demonstrate that the Carrier acted unreasonably or that it applied its standards in a discriminatory or capricious manner.

The issue at bar is the reasonableness of the Carrier's action. The Board finds that subsequent events to September 1 support Carrier's alleged medical concerns with the physical standards necessary to maintain safety. Both stress tests in March, 1982 and blood pressure concerns by the Chief Carrier physician in April, which were not cleared until June 24, 1982, show a reasonableness of concern to that point in time. The Board does note that from June 24, 1982 until July 6, 1982 a time lapse of short duration occurred before Claimant was approved to return to service and this time lapse is left unexplained. If the Claimant was medically acceptable on June 24th, then he should probably have been capable of maintaining his position within several days. Yet the time lag is not so long as to be unreasonable; and the record as handled on property does not clearly evidence any unreasonable action on the part of the Carrier.

It is the determination of the Board that Carrier action in the instant case demonstrates a prudent concern with its overall responsibilities for the safety of the employes, its operations, and the public. As such, this Board is unable to allow this claim. This ruling is consistent with a long list of Awards by the National Railroad Adjustment Board (Second Division 7134, 7151; Third Division 6753, 8175, 11029, 14173, 22553 inter alia).

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.

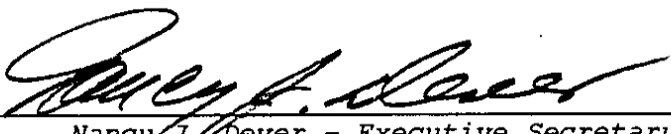
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of July 1984.