

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26273

Docket Number MW-26529

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Northern Region)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

Trackman J. M. Bulthuis shall be returned to his position as trackman and he shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service beginning November 29, 1983 (System File C-M-2139/MG-4600)."

OPINION OF BOARD: On May 17, 1982, Claimant, a Trackman, sustained an on-duty injury to his lower back requiring his absence from service. As a result of a physical given by Dr. DeKryger on December 20, 1982, which recommended only a return to light duty, the Carrier considered Claimant medically disqualified since no light duty work was available. A subsequent examination by Claimant's physician, Dr. Garcias, permitted Claimant to return to work effective April 4, 1983, with the restriction that Claimant could not lift over 30 pounds. Dr. Garcias later modified that restriction for a return to work effective May 23, 1983, with no lifting over 40 pounds for a period of eight weeks. Because of the restrictions, Claimant was not permitted to return to duty.

The Carrier's Chief Medical Officer, Dr. Thomasino, arranged for Claimant to have an orthopedic evaluation by the Carrier's specialist, Dr. Andre, on August 30, 1983. After receiving the results of that examination, the Carrier determined that Claimant was occupationally disqualified from performing Trackman duties.

Claimant then provided the Carrier with a return to duty slip dated November 28, 1983, from a Dr. A. C. Hoekzema indicating that Claimant could return to regular duty on November 29, 1983. Another release from Dr. Garcias dated December 8, 1983, was provided permitting Claimant to return to work effective December 9, 1983, without restrictions. On December 16, 1983, Dr. Thomasino wrote to Claimant inquiring whether Dr. Garcias or Dr. Hoekzema was his physician and further sought clarification concerning Claimant's condition. In that letter, Dr. Thomasino stated that because of the confusion concerning Claimant's condition, the Carrier continued to consider Claimant medically unqualified. On January 26, 1984, Dr. Garcias wrote Dr. Thomasino indicating that he was treating Claimant and that if Claimant continues to complain of pain, then Claimant should be kept on restricted activity and that if the pain got to the point that he could not function, then Claimant would not be able to return to work. Thereafter, the Carrier maintained its position that Claimant was not qualified to return to work.

The Organization argues that Claimant was cleared to return to work and the Carrier's refusal to permit Claimant to return violated the applicable Agreement. However, an examination of the releases given Claimant does not support the Organization's position since those releases ultimately were either contradictory, incomplete, vague or placed restrictions upon Claimant's activities. As laymen, we are unable to determine Claimant's physical condition from this record and because of the confusion generated by the numerous releases, we are further unable to determine if the Carrier acted within its authority. Under the circumstances of this case, we shall therefore award that Claimant's and the Carrier's physicians select a neutral physician who is a specialist in Claimant's condition and that neutral physician shall determine if Claimant is qualified to return 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 Employee involved in this dispute are respectively Carrier and Employee 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

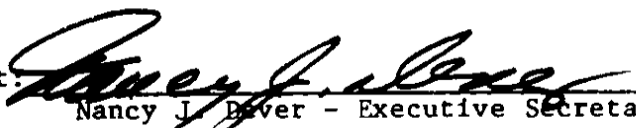
That the Agreement was not violated.

A W A R D

Claim disposed of in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.