

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Alton and Southern Railway Company

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

(1) The Agreement was violated when Track Laborer C. Tolliver was improperly withheld from service beginning February 16, 1985 and when the Carrier refused to enpanel a tripartite medical panel as required by Rule 36(d) (System File 1985-4 A&S/S 1638-76).

(2) Claimant C. Tolliver shall be returned to the Carrier's service subject to the findings of a tripartite medical panel and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the time of the incident that gave rise to this Claim, Claimant was employed by Carrier as a Laborer and was performing the function of Caboose Supplyman. While on duty on December 16, 1984, Claimant experienced a seizure and was found lying on the ground beside a caboose. Claimant was removed from Carrier property by ambulance and underwent medical treatment.

In February 1985, Claimant presented a statement from his doctor to Carrier indicating that he could perform his full duties and that his medical condition would not affect his working ability. Carrier advised Claimant that before he could return to service, he would have to be cleared by Carrier's Medical Director. Claimant was examined by Dr. Shaw. A report of his examination indicated that Claimant had an extensive history of seizure disorder. Carrier's Medical Director concluded from this report that Claimant did not meet Carrier's published medical standards and that he was unfit for service.

The Organization in this case has, since March 25, 1985, attempted to get Claimant back to work. The General Chairman first requested that Carrier implement Rule 36(d) and call in a third disinterested physician to review Claimant's case. Carrier denied this request on the basis that there is no dispute over Claimant's medical condition. Carrier's physicians as well as Claimant's physician are in agreement that Claimant has a history of epileptic seizures and a third doctor's opinion is not necessary in this situation.

Carrier contends that its published medical standards exclude from service a Track Laborer who is prone to seizures.

This Board has reviewed the record and the numerous arguments presented by both sides. Based on that review and numerous cases supporting Carrier's right to establish medical standards for its employees, we conclude that the Organization has no claim in this instance. Carrier's medical standards indicate that the Chief Medical Officer will make the final decision on the ability to perform service when an employee has a history of convulsions or seizures of any type. In this instance, there is no question that Claimant has a history of seizures. Under such conditions, Carrier has the right, if not the obligation, to declare Claimant unfit for service as a Track Laborer. This Board has no authority to decide otherwise.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division:

Attest:


Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.