Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 28505
THIRD DIVISION Docket No. MW-29014
90-3-89-3-419

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it withheld Section Laborer R. C. Esquibel from service upon his return from furlough status on March 14, 1988 (System File D-88-01/MW-12-8).

(2) The Claimant shall be paid all wage loss suffered starting March 14, 1988 and continuing until the violation ceases."

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.

When Claimant returned from furlough in February 1988, he was required to take a physical examination in accordance with a Carrier policy requiring exams of certain employes who were on furlough for more than six (6) months. As a result of this examination, it was determined that Claimant did not meet the Carrier's medical standard for visual acuity of "20/30 in one eye and not less than 20/50 in the other, with or without glasses." Claimant's vision in his left eye, according to his own optometrist, could not be corrected to better than 20/60. His opthalmologist reported that Claimant exhibits best corrected acuity of 20/100+ in the left eye, as well as a thirty percent loss of visual field in that eye. Accordingly, Claimant was advised by letter dated March 25, 1988, that he was not physically qualified to return to work.

The Organization has argued that the Carrier's medical standard is unreasonable and that it has not been applied fairly in Claimant's case. It notes that Claimant had surgery for a detached retina in 1978 and had worked continuously thereafter until furloughed in 1987. The Organization asserts that the Carrier must show that Claimant's vision has changed so dramatically as to render him incapable of performing his duties safely and efficiently before the Carrier can apply its medical standard in light of Claimant's ability to work subsequent to his surgery.

The Organization asserts that the Carrier has not been uniform in its application of the medical standard. The Organization has referred to other employes who were permitted to work despite having restricted vision. It also notes that the Carrier's Safety Rule 876 reads:

> "Employees having eye sight in but one eye must wear prescribed eye protection at all times while on duty."

The Carrier avers that it has a valid interest in enforcing its medical standard with respect to Claimant. Because he is a section laborer and must work in and around moving equipment both on or off track, the Carrier contends that he must have adequate vision to protect himself against the movement of equipment. The fact that he had worked as long as he had without incident is no guarantee of future safety, reasons the Carrier.

This Board has consistently held that the Carrier has the prerogative of setting reasonable medical standards and ensuring that its employes qualify thereunder. This was recognized in Third Division Award 22379, which involved the same parties as herein, as well as the same medical standard. In that case, however, the Board found that the Carrier improperly applied the standard because the Claimant's opthalmologist had approved his return to work. The Board also inferred from Safety Rule 876 and other evidence that the Carrier has in the past utilized employes with impaired vision in one eye successfully. The Board's award was limited to the facts presented therein. In this case, however, we cannot draw the same inferences. Safety Rule 876 is a general rule, while the vision standard applies to only certain positions. The Carrier states that there are positions which do not require sight in both eyes. In those cases, the employee must comply with Rule 876. When the vision standard is applicable, however, Rule 876 is moot.

In the record before the Board in this case, the Carrier has refuted the Organization's assertion that it has allowed other employees to work with similar vision limitations. Two of those employees had retired before the standard went into effect. The Carrier contends that the third employee cited by the Organization met the vision standards. The fourth employee was the Claimant in Third Division Award 22379.

Finally, unlike the situation in Award 22379, there is no evidence that Claimant's condition does not have an effect upon his ability to work safely. Claimant's opthalmologist made no such statement. The fact that he has worked thus far without incident speaks well for Claimant, but it does not minimize the risk.

Under the circumstances, we cannot find that the Carrier was arbitrary or unreasonable either in setting the medical standard or applying it in Claimant's case. The Agreement, therefore, was not violated.

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 7th day of August 1990.