

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30253
Docket No. MW-30816
94-3-92-3-640

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc., (former Louisville
(and Nashville Railroad Company)

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

- (1) The Carrier violated the Agreement when it improperly withheld Mr. J. M. Smith from service from March 6 to 26, 1991. [System File 11(19)(91)/12(91-1122) LNR]
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. M. Smith shall be compensated for all wage loss suffered as a result of his improper removal from service."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Prior to the incident leading up to this Claim, Claimant was working as a Machine Operator on a plate retriever machine. On March 5, 1991, Claimant's supervisor disqualified him from operating the plate retriever machine and removed him from service, following what the latter believed to be erratic and inappropriate behavior. Carrier's Chief Medical Officer informed Claimant on March 7, 1991, that he was to report for a psychiatric evaluation. Claimant underwent the evaluation on March 11, 1991, following which the psychiatrist found him fit to return to work, and so informed Carrier. On March 26, 1991, Carrier notified Claimant that he should return to work.

On March 20, 1991, the Organization requested a Formal Investigation regarding the March 5, 1991, disqualification. Carrier denied that request on the grounds that it was not timely filed. Subsequently, the Organization presented a Claim on behalf of Claimant for all time lost during the period from March 6 to March 26, 1991. Carrier denied that Claim on the basis that Claimant was temporarily disqualified for legitimate medical reasons.

The record supports Carrier's decision to remove Claimant from service, and requiring his examination by a psychiatrist. In light of Claimant's previous medical history and his erratic behavior, the supervisor's decision was neither unreasonable nor arbitrary. (See Third Division Award 28506 and Second Division 7863.) Once it was determined that Claimant was fit to resume his duties, he was returned to service. Accordingly, the Board finds the instant claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.