Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30846
Docket No. SG-31354
95-3-92-3-846

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

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad (CSXT):

Claim on behalf of G. F. Vincent for payment of 189 hours at the straight time rate, payment for any overtime opportunities which would have been available to the Claimant absent Carrier's violation, and restoration of 24 days for vacation qualification purposes, account Carrier violated the current Signalmen's Agreement, particularly Rules 15 and 16, when it removed Claimant from service from August 20, 1991, until September 23, 1991." Carrier's File No. 15(92-2). General Chairman's File No. 91-SYS-09. BRS Case No. 8779-L&N.

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.

Claimant is a Signalman at Carrier's Savannah Signal Shop. Prior to July 1, 1991, he was absent from his position due to a prolonged illness. He sought to return to work effective July 1, 1991 and provided certain paperwork from his treating physicians to support this effort. On July 8, 1991, Carrier's Associate Chief Medical Officer informed Claimant that he continued to be medically unqualified due to his use of a prescription medication that might cause him to bleed excessively in the event of injury. This information concerning the medication was contained in a June 14, 1991 report by one of Claimant's three treating physicians that was provided to the Carrier's Medical Officer. Claimant was ultimately returned to service on August 9, 1991. However, on August 20, 1991, he was again removed from service for medical reasons related to the use of the same medication. Carrier's concerns about the use of the medication were ultimately resolved and Claimant was allowed to return to service on September 23, 1991.

Two claims emerged from the foregoing events. The first alleged Carrier violated the Agreement by improperly withholding Claimant from service from July 1 to August 9, 1991. It was addressed by Third Division Award 30663, which denied the claim. It is recommended that Award 30663 be read in conjunction with this Award for a full understanding of the matter. Suffice to say, the basis of the denial in Award 30663 was the Carrier's right, and indeed its obligation, to determine the physical fitness of its employees for service. The Board found that Carrier had not abused its managerial discretion in assessing Claimant's status as it had.

This claim is for pay following Claimant's removal from service on August 20, 1991 after he had been allowed to return on August 9. Carrier attributes this removal to the use of the prescription medication, and says that Claimant was only allowed to return for the brief period because of administrative error.

The focus of this claim is the question of whether Carrier reasonably believed Claimant was continuing to use the medication in question. In its Submission, the Organization does not dispute that carriers have a well recognized prerogative to determine the medical condition of their employees, particularly those returning from an injury or illness. The Organization repeatedly asserts, however, in the on-property record as well as in its Submission, that Carrier was provided written information on July 8, 1991 via FAX, showing that Claimant was no longer taking the medication in question. The Organization also alleges the existence of a July 14, 1991 medical report to the same effect.

On March 2, 1992, during the later stages of the on-property handling, Carrier wrote to the Organization denying that it had any medical reports of July 8 or 14, 1991 stating that Claimant had ceased taking medication. Carrier requested copies of such reports.

On March 24, 1992, the Organization wrote Carrier and enclosed "... additional copies for your ready reference." The copies enclosed do not include any reports dated July 8 or July 14, 1991, nor do the enclosures state that Claimant had discontinued the medication. Curiously, these two letters and the enclosures, which were clearly part of the record on the property, are missing entirely from the Organization's Submission. They appear only in the Carrier's Submission.

Oddly enough, the Organization's Submission does contain a "To Whom It May Concern" report from a Dr. Bradley, dated July 8, 1991, stating that Claimant had discontinued the medication in question. The report is attached as Page 3 of its Submission Exhibit No. 6, which is a two-page appeal letter dated February 24, 1992. A careful reading of the text of this letter reveals no suggestion that the July 8, 1991 report was enclosed with the letter. Moreover, the closing section of the letter does not make reference to any attachments. While the Organization's February 24, 1992 letter is found in Carrier's Submission, the July 8, 1991 medical report is not. In addition, no medical report dated July 14, 1991 is found anywhere in either party's Submission.

It is of paramount importance that parties to a dispute develop a complete record, during their handling of the matter on the property, to clearly establish the facts essential to supporting their relative positions. This record does not do that. Rather, it leaves us to speculate whether the July 8, 1991 report was actually provided to the Carrier at any time prior to September 23, 1991. The Board will not indulge in such speculation.

In a dispute of this nature, the Organization bears the burden of proof to establish, by a preponderance of the evidence in the on-property record, that the Carrier acted unreasonably in removing Claimant from service for medical reasons. On the record before us, we find that burden has not been sustained. As a result, this claim must be denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.