

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30906
Docket No. MW-31255
95-3-93-3-262

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. A. Gorby from his assigned position beginning August 1, 1991 and continuing until he was released on November 26, 1991 and thereafter permitted to return to service (System Docket MW-2447).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. A. Gorby 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 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.

On July 31, 1991, Claimant experienced dizziness, diarrhea and an unsteady gait. Claimant was sent to the camp cars for a cold shower. Subsequently, Claimant was sent to Carrier's fee-for-service physician for a physical examination. On August 7, 1991, Carrier's Medical Director advised Claimant that, as a result of the examination:

"...the following has been revealed:

Dizziness, bowel incontinence, unsteady gait.

Due to the above, you have been disqualified from duty by Conrail's fee-for-service physician and advised to consult your personal physician for further examination and treatment. It is also recommended that a neurological evaluation be obtained. When corrected satisfactorily in the opinion of your treating physician, you should schedule an appointment with the fee for service physician for a return to duty examination."

Claimant received no treatment from his personal physicians, but did undergo a series of tests. Thereafter, Claimant's physicians certified that he was qualified to work and Claimant was examined by Carrier's physician and was requalified and reinstated.

The Organization argues that Carrier acted arbitrarily and unreasonably in disqualifying Claimant. The Organization contends that there is no medical evidence in the record developed on the property to support Carrier's determination that Claimant was not medically qualified. The Organization observes that Claimant suffered from heat exhaustion that was treated with a cold shower. The Organization argues that Claimant received no medical treatment during the period that he was disqualified. In the Organization's view, Claimant never should have been disqualified and he is entitled to compensation for the period he was held out of service.

Carrier contends that it made a reasonable medical determination to withhold Claimant from service and to disqualify him for medical reasons. Carrier maintains that Claimant has a history of seizures and that, in light of that history, it acted reasonably and prudently in disqualifying him from service. Carrier argues that it must be afforded the discretion to make good faith medical judgments in the interests of the health and safety of all employees and in the interests of limiting its liability for employee injuries.

With its Submission to this Board, Carrier submitted evidence in support of its medical determination that was not submitted on the property. The Board may not consider such evidence. In considering the evidence that was submitted on the property, although we believe the basis for Carrier's determination could have been documented better, we find sufficient evidence to show that Claimant's disqualification resulted from a reasonable good faith medical determination.

Carrier must be afforded sufficient latitude to enable it to make good faith reasonably-based medical determinations in the interests of the health and safety of all employees. Of course, this does not mean that the factual basis of Carrier's decisions are not subject to review before this Board. We find that the facts of this case, however, are not comparable to prior cases where carriers' medical disqualifications of employees were found to have been arbitrary or unreasonable.

For example, in Second Division Award 12301, claimant was removed from service pending a medical examination because he stated that he was unable to do more than five traction motors per day. Following the medical examination, claimant was disqualified, but carrier's medical director refused to specify the diagnosis which led to his disqualification. Claimant was directed to see his personal physician and to advise carrier when his physician had released him to return to duty. However, when claimant's attorney wrote seeking the specific diagnosis, claimant was returned to duty without any certification by his physician and without a follow-up examination by carrier's physician. Thus, carrier's own actions in returning claimant to service without any follow-up medical examination and in apparent response to the involvement of claimant's attorney impeached its initial, unsubstantiated decision that claimant was not medically qualified.

In Second Division Award 12492, carrier offered no evidence to support its chief medical officer's decision to withhold claimant from service pending medical examination. The Board refused to uphold the medical officer's decision in the absence of supporting evidence, observing, "[T]his case does not deal with physical disabilities but rather with the elusive domain of alleged psychological disorder. A complete review of this case shows that Carrier never stated the reason or reasons, in the record on the property, why the Medical Officer concluded that a psychiatric examination was necessary."

In the instant case, Carrier withheld Claimant from service pending a medical examination after Claimant exhibited dizziness, diarrhea and an unsteady gait. Although the Organization dismisses these symptoms as an episode of common heat exhaustion that was treated with a cold shower, the record on the property reveals that Claimant had a history of blackouts, dizziness and giddiness. Under such circumstances, Carrier acted reasonably in withholding Claimant from service pending examination.

The record further shows that as a result of the examination, Carrier made a good faith reasonable determination to disqualify Claimant. Carrier informed Claimant of the specific reason for the disqualification, to wit: dizziness, bowel incontinence and unsteady gait. Carrier further advised Claimant to contact his personal physician and, upon being released by his physician, to schedule a return-to-duty examination with Carrier's fee-for-service doctor. Claimant followed those instructions and was reinstated to service. Based on this evidence, we see no reason to disturb Carrier's reasonable good faith judgment that the health and safety of all employees required Claimant's medical disqualification.

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 8th day of June 1995.