

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31317
Docket No. MW-30746
96-3-92-3-543

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Monongahela Railway Company

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

- (1) The Agreement was violated when the Carrier medically disqualified Mr. J. Walker from service on May 16, 1991 and failed and/or refused to substantiate its alleged reasons therefor.
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be paid all straight time, all overtime, credit for days and months of retirement and vacation worked by any employee replacing him beginning May 16, 1991 and continuing."

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.

According to the Carrier, Claimant entered service on September 10, 1948. At relevant time, Claimant was working as a foreman.

The record developed on the property is somewhat sparse. The exchange of correspondence shows that on May 16, 1991, the Carrier disqualified Claimant as medically unfit and removed him from service based upon Claimant's failure to pass a physical examination conducted May 14, 1991, which revealed that Claimant had a high sugar level. The Carrier would not permit Claimant to return to work without the approval of the Carrier's Chief Physician.

As the claim was progressed on the property, the Organization took the position that when informed that he did not pass the examination, Claimant inquired what his levels were and the Carrier did not produce the result. However, Claimant's Medical Records were attached to the Carrier's Submission to this Board. The Carrier argues that the records show that Claimant had Diabetes Mellitus and, due to Claimant's elevated Glucose level, the Carrier was within its managerial prerogatives to disqualify Claimant because of that condition. The Organization asserts that those records were not supplied by the Carrier on the property and therefore cannot be considered by this Board. The Organization further argues that if the Medical Records are considered, those records will show that the Carrier acted in an arbitrary fashion.

The Carrier is within its managerial rights to set reasonable physical qualifications for employees and, where employees do not meet those levels of qualification, to withhold those employees from service until their physical condition meets the Carrier's standards. See PLB No. 910, Award 225 ("Carrier clearly has the right to prescribe reasonable standards of physical fitness for its employees") and SBA No. 1016, Award 27 ("... Carrier was within its rights to establish medical requirements Given the danger involved in railroad work, especially maintenance of way work, and the financial exposure of Carrier if there are accidents, it is clearly within the Carrier's province to set medical standards to protect itself, as well as the employee") cited by the Carrier. The Carrier urges this Board to find that by disqualifying Claimant because of elevated sugar levels in his blood that it was merely acting reasonably and within its prerogatives.

The Carrier thus has great latitude in this area. But, the Carrier's right is not unfettered. See Third Division Award 25186:

"The Carrier clearly has the right to make determinations as to the physical qualifications of employees and has a duty to remove from service employees who are physically unqualified for their jobs. It is not the function of this Board to substitute its judgment for that of the Carrier's physician with respect to such medical determinations or the medical standards upon which they are based.

However, an employer's authority to make such determinations, while broad, is not unlimited. The Carrier must have a rational basis for its determination and must make its determination based on some reasonable standard. The Board may reverse a Carrier's determination where it is pretextual, arbitrary, or unreasonable (See e.g., Second Division Award Number 7303)"

In its Submission at 2, the Carrier states that the results of the May, 1991, examination of Claimant showing elevated Glucose levels "... were consistent with a previous physical conducted in July of 1990." See also, Carrier Submission at 6 ("The [May, 1991] test ... was consistent with results from a previous test done on July 5, 1990."). The obvious question is why Claimant was permitted to work after showing elevated Glucose levels in July, 1990 but was not permitted to work after such a showing in May, 1991? The July 5, 1990, physical examination found in the Medical Records supplied by the Carrier (which examination was conducted by the Carrier) noted that Claimant had Diabetes and specified his blood sugar level (which the Carrier asserts was "consistent" with the May, 1991 exam). But as shown by those records, the Carrier found Claimant to be "qualified" in July, 1990. What changed to cause Claimant's disqualification in May, 1991, when the results of the two tests were "consistent"? From evidence developed in the record, the Carrier does not tell us.

Therefore, we find that there is no rational basis to explain why Claimant was disqualified in May, 1991, when the Carrier did not disqualify Claimant in July, 1990, where the test results for both years, in the Carrier's words, were "consistent". We have no choice but to find that the Carrier's action disqualifying Claimant in May, 1991, was arbitrary. The claim will be sustained.

As a remedy, Claimant shall be made whole in all respects with the appropriate offsets for interim earnings, if any, received by Claimant during the time Claimant was withheld from service. We are advised that Claimant has now retired. Claimant's entitlements under this Award shall therefore cease as of the date of his retirement. If adjustments to Claimant's retirement benefits are necessary, the Carrier is directed to take the necessary steps to ensure that Claimant's retirement benefits reflect the results of this Award.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.