

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 42516
Docket No. SG-42840
17-3-NRAB-00003-150017 (Old)
17-3-NRAB-00003-160752 (New)

The Third Division consisted of the regular members and in addition Referee Sidney Moreland when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of T. L. Allison, for reinstatement and payment for all time lost, beginning on August 13, 2013, and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rule 52, when it failed to perform the re-examination as outlined in said rule and continued to withhold the Claimant from service after his physicians had found him healthy and fit to return to duty with two (2) minor restrictions. Carrier’s File No. 1591872. General Chairman’s File No. UPGC-52-1837. BRS File Case No. 15043-UP.”

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 were given due notice of hearing thereon.

The Claimant, a Signalman, was diagnosed with a large arterial wall myocardial infarction (heart attack) and ischemic cardiomyopathy with a low left ventricular ejection fraction.

The Claimant's initial physician (Sanchez) determined the Claimant had an increased risk of sudden cardiac death and implanted a cardioverter defibrillator ("ICD").

The Claimant's next physician (Pitts) informed the Carrier that the Claimant was ready to return to work with restrictions (no welding and no jack hammer operation).

The Carrier's Health and Medical Services Department (HMS) reviewed the Claimant's medical records and did an evaluation and risk assessment of the Claimant returning as a Signalman. The Carrier notified the Claimant that he was medically cleared to work with restrictions (avoiding high electric magnetic field ("EMF") exposure) and as such; the Carrier was unable to accommodate the Claimant in his prior Signalman's position. The Claimant was also advised that he could exercise his seniority for another less restrictive position.

The Organization requested the Claimant be returned to work immediately without restrictions and requested a re-examination of the Claimant in accordance with Rule 52, which states in pertinent part:

"Rule 52-PHYSICAL EXAMINATIONS

A. Physical Disqualification

An employee subject to the Agreement between the parties hereto who is disqualified as a result of an examination conducted under the Carrier's rules governing physical or mental examinations will be notified in writing, with copy to his General Chairman of his disqualification and will be carried on leave of absence.

B. Requesting Re-Examination

If the employee feels his condition does not justify removal from the service or restriction of his rights to service, he may request re-examination. Such request must be submitted by him or his representative within thirty (30) days following notice of the disqualification, unless extended by mutual agreement between the

General Chairman and Labor Relations. He may be given further examination as follows:

- 1. The employee will be re-examined by a physician designated by the Carrier and a physician of the employee's choice who will both be graduates of a class (A) medical school or regular medicine. If the two physicians agree that the man is disqualified, their decision is final; if they agree the man is qualified, he will be returned to service..."**

The Carrier's selected physician (Holland) reviewed the Claimant's medical records and issued his findings to the Claimant's selected physician (Pitts), which contained his opinion that the Claimant could not return to work as a Signalman. The Claimant's physician did not respond to Dr. Holland's evaluation.

The Organization contends the Carrier failed to re-examine the Claimant in accordance with Rule 52 (B), since the Claimant was not physically examined by the Carrier selected physician (Holland). The Organization asserts that the Claimant is now entitled to reinstatement with the lost compensation awarded as a result of the Carrier's breach of Rule 52.

The Carrier asserts that they have always had the right to set work restrictions for employees returning to work following a medical condition that required surgery; that the Claimant was advised that his risk of exposure to EMF sources could interfere with his defibrillator; and offered the Claimant the ability to exercise his seniority to a position that would not interfere with his medical condition.

The Board read the record carefully, including the Rule 52 duties of re-examination; the medical opinions rendered therein; and the work restrictions placed upon the Claimant by the Carrier, and whether or not subsequent medical opinions differed.

First, Rule 52 provides very little mandate upon the parties selection of a physician or the duties required of the selected physician. The Carrier acted within their managerial rights by evaluating the Claimant's medical records, clearing his return to work, and placing physical restrictions upon him.

The Organization complains that the Carrier's selected physician is employed by the Carrier's medical department, however nothing in Rule 52 prohibits either party from selecting whomever doctor they wish, provided the academic criteria is met.

The remaining contention between the parties lies in the Organization's assertion that the Claimant's physician's restrictions (i.e., avoid welding, strong magnetic fields, and repetitive high velocity arm movement) are significantly different from the Carrier's physician's restrictions (i.e., no welding, no work in areas where measured levels of EMF exceed the manufacturer's exposure limits for his ICD). The resulting dual medical opinions concerning the Claimant's restrictions, principally the magnetic field exposure concerns, were strikingly similar.

AWARD

Claim denied.

ORDER

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 11th day of January 2017.