

PUBLIC LAW BOARD NO. 1760

Award No. 66

Case No. 66  
File NW-MOB-84-22

Parties     Brotherhood of Maintenance of Way Employees  
to           and  
Dispute     Norfolk and Western Railway Company     (Former Wabash)

Statement  
of Claim:     1. Carrier violated the effective Agreement when B&B  
Painter Helper L. J. Ginn was unjustly withheld from  
service July 10, 11, 12 and 16, 1984, pending approval  
of her physical condition.

              2. Claimant Ginn shall be paid for 40 hours due her  
between the period of July 10 and 16, 1984, at the  
respective rate of B&B painter helper at the  
rate of \$11.49 per hour, for a total of 40 hours or  
\$459.60.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a B&B painter Helper since April 19, 1982, was granted permission to be absent on July 9, 1984 because of allegedly suffering from longstanding severe menstrual problems which was known to Carrier. Her Supervisor called her about 4:15 PM on July 9th and advised that she would need a doctor's approval before being permitted to return to work.

Claimant, apparently, reported to Carrier's Doctor Conely. Thereafter, she presented her Supervisor with two slips, one showing that Dr. Conely had seen her that day and the second gave a diagnosis and findings. The Supervisor allegedly asserted that he required a third medical letter, from Ms. Ginn, in doctor's terms as to what was wrong with her on that particular day.

Claimant returned to Carrier with all the requested information and was advised by her Supervisor that she could not return to work until she had a physical examination. The acquired medical information was mailed to Carrier's Regional Medical Director located at Roanoke for his review and determination.

Claimant was withheld from service July 10th through the 16th at which latter date medical approval permitting her to return to work came down from the Medical Director, Dr. Ford.

Carrier perceives this case, in essence, to be simply one of Carrier exercising its lawful obligation and duty to withhold from service, and medically examine an employee whose health is causing it concern and potential endangerment to fellow employees if permitted to work without a medical clearance and that the five (5) day delay during which Claimant was held out of service was a most reasonable time frame to getting the medically approved results.

The Board, on the record before it, agrees with Carrier's asserted rights and obligation, as a matter of general principle. Carrier, absent an agreement provision to the contrary may require a doctor's release as a condition precedent to permitting an employee's return to service if there be cause therefor.

However, what is at test here is whether Carrier, in the particular circumstances of record, had acted arbitrarily and capriciously. We find that it did. Claimant's record of absenteeism, which is not properly before this Board, provided ample opportunity and basis for Carrier to conduct a formal disciplinary hearing thereon and if proven, for imposing discipline commensurate with the proven record.

The Board must, as pointed out in Fourth Division Award 1691:

"...it is well settled that in determining disputes we are limited to consideration of the agreement and record and are not at liberty to take into account the equities of the situation."

Claimant's absenteeism problem stands on its own basis as a matter to be dealt with. The requisite medical examination to return to

work was given by Dr. Conely. He rendered a medical report thereon and okayed her. There was, at Carrier's request, a previous special medical examination given the Claimant on May 24, 1984 by a Dr. Bade with the results that "she had menstrual problems and she would have severe headaches and cramps." Thus, there was existing knowledge of Claimant's physical condition. If her physical condition and problem affects her ability to work it can be addressed by methods other than by that which was chosen herein. Carrier abused its discretionary right and acted capriciously. If Claimant, as it appears, was examined by Dr. Conely on July 10th then that portion of the claim is denied. Otherwise the claim is sustained as per findings.

Award: Claim sustained as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

M.A. Christie  
M. A. Christie, Employee Member

J.A. Abbateello, Jr.  
J. A. Abbateello, Jr., Carrier Member

Arthur T. Van Wart  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued December 8, 1985.