

PUBLIC LAW BOARD NO. 3539

Award No. 15

Docket No. 21
Carrier's File 310-577

Parties Brotherhood of Maintenance of Way Employes

to and

Dispute: Missouri Pacific Railroad Company

Statement
of Claim:

"1. Carrier violated the effective Agreement when Grinder Operator Jimmie St. Andre was not permitted to work beginning June 24, 1983."

"2. Claimant St. Andre shall now be paid for eight (8) hours each work day, including holidays and any overtime which would have accrued to him had he been permitted to return to work, beginning June 24, 1983, continuing until permitted to fill his position as Grinder Operator." (310-577)

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 January 5, 1959, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The Claimant in this case was medically disqualified from the service back on June 16, 1983, in light of the medical findings taken from a routine physical examination which indicated that the employe was suffering from a grand mal seizure disorder. The very existence of a seizure disorder is

recognized as a disqualifying condition under the Carrier's published medical standards. Subsequently, there was a considerable exchange of correspondence between the parties regarding the nature and the extent of the Claimant's seizure disorder. During this period of time, it was determined that the Claimant was also suffering from a serious substance abuse problem, which of itself, was also a disqualifying condition under the Carrier's published medical standards.

After a rather lengthy period of correspondence exchange, the Carrier offered in disposing of the entire issue to return the Claimant to the service provided his seizure disorder was shown to be under control and provided the Claimant enrolled in and continued to actively participate within the Carrier's Employee Assistance Program. This action was taken, atleast in part, due to certain medical statements furnished by the Claimant's personal physician, which suggested the seizure condition was under control. The issue of substance abuse however still remained. Despite repeated invitations having been extended by the Carrier's Employee Assistance Counselors to the Claimant, Mr. St. Andre refused to become involved in the Program. In effect, the Claimant rejected the Carrier's offer.

It is universally accepted that a Carrier retains the right to establish and maintain employee medical standards provided, of course, its findings are not arbitrary, capricious or exercised in bad faith or for the purpose of circumventing the terms of the Agreement. Here there is no showing that the Carrier's action represented anything other than the reasonable

exercise of its reserved right to determine whether or not its employees are physically qualified to perform the work of a particular position. The Carrier's decision to medically disqualify this employee was not improper and certainly did not constitute an agreement violation. The claim to pay for time lost cannot be sustained.

With regard to the claim for reinstatement, the Board is not unmindful of the Claimant's fifteen years of service with the Carrier which would certainly entitle Mr. St. Andre to every reasonable degree of consideration. We therefore order that the Carrier renew its offer of reinstatement subject to the following conditions:

- 1) Mr. St. Andre will undergo a physical examination to determine if whether or not his current seizure condition will permit him to return under the Carrier's published medical standards.
- 2) Mr. St. Andre will within thirty days of the date of the Award enroll in the Carrier's Employee Assistance Program and his return to service will be predicated upon first receiving a favorable recommendation from the Director of the Employee Assistance Program.
- 3) Should Mr. St. Andre fail to enroll in the Employee Assistance Program within the time period as specified above, the claim as presented here will be considered denied in its entirety and the case closed.

Award: Sustained to the extend outlined above.

M.A. Christie

M. A. Christie, Employee Member

J.J. Shannon

J. J. Shannon, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

Issued October 1, 1986.