

PUBLIC LAW BOARD NO. 3539

Award No. 16

Case No. 21

Parties Brotherhood of Maintenance of Way Employees  
to and  
Dispute Missouri Pacific Railroad Company

Statement

of Claim: 1. Carrier violated the effective Agreement when Trackman J. B. Medellin was unjustly withheld from service beginning February 29, 1984.

2. Claimant Medellin shall now be paid for eight (8) hours each work day, including any holidays falling therein and for any overtime which would have accrued to him had he not been held out, beginning February 29, 1984, and continuing until returned to service. (310-623)

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 October 5, 1980, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, Trackman, following a disciplinary suspension, was given a return to work physical examination on May 1, 1980. It was determined that Claimant who stood 5' 9" was overweight and he was restricted from returning to service. He was required to reduce his weight to 210 pounds before being permitted to return to service.

As a result of another physical examination on June 24, 1980 Mr. Medellin who had reduced his weight to meet the Carrier's published medical standards which in his case was "121 to 214 lbs." was returned to service but required to have another weight check in three (3) months.

A weight re-check examination on January 29, 1981 reflected that Claimant's weight again exceeded the maximum limit for retention in

service. Mr. Medellin was again removed from service until his weight was reduced to 210 lbs. or lower.

Claimant underwent a successful weight re-check on November 13, 1981. As a result of his weight being reduced, Claimant was returned to service and instructed to report for a weight check in three months.

Another weight re-check examination on December 29, 1982 caused Mr. Medellin's removal from service on January 1983 until his weight was reduced to 210 lbs. or less.

A weight re-check examination on November 8, 1983 caused the Medical Director on November 14, 1983 to advise:

"Mr. Medellin may return to service, however, he should return to Dr. Koontz in three (3) months for weight check. If not reduced to 235#, he will again be removed from service. Mr. Medellin must continue to lose weight until he reaches 220#." (underscoring added)

A weight re-check examination on February 14, 1984 caused the Medical Director to order that:

"Mr. Medellin should be removed from service until his weight is reduced to 235 lbs. or lower as the first phase of his reduction program." (underscoring added)

The former General Chairman on April 23, 1984, some 53 days later, filed a claim for lost time for being held out of service asserting that the Carrier's actions were in violation of the agreement, particularly Rule 12, when Claimant was removed from service because of being overweight; that he weighed 250 lbs., and that was the Claimant's weight when returned to service in November and that is what Claimant weighed before being removed from service before November 1983.

The Board finds no merit to this claim. It has been long held that Carrier is sole judge of its medical standards provided as enunciated in Third Division Award 14249, M of W v. the New York, Chicago and St. Louis Railroad (J. Dorsey):

"It is the prerogative of Carrier to determine the physical qualifications of its employees so long as its findings are not arbitrary, capricious or exercised in bad faith as for the purpose of circumventing the terms of the Agreement."

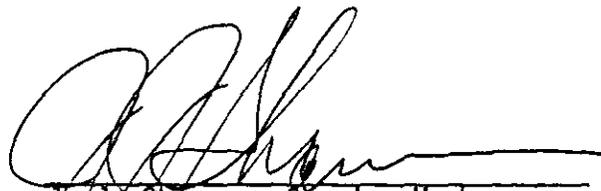
The Employees failed to prove that the Carrier had not met the above tests.

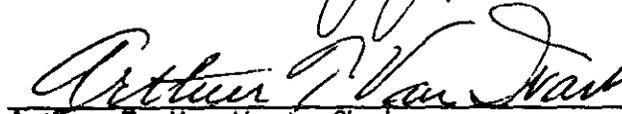
Claimant's handling was not a disciplinary matter. It was a medical matter. Hence, Rule 12 was not involved. Here, Carrier's weight standards were known. The Claimant was hired in at 204 lbs., the desired maximum for his height. The Medical Director acted reasonably and fairly in the administration of Carrier's Medical Standards in the three restrictions placed on Mr. Medellin. Claimant's return to service in November 1983 and February 1984 were conditional on Claimant's reducing his weight to a much lower level. Neither served to, as implied by this claim, change Carrier's medical standards. Carrier acted properly in accepting the recommended action of its Chief Medical official in this case.

This claim will be denied.

Award: Claim denied.

  
Sol B. Hammons, Employee Member

  
J. J. Shannon, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued January 6, 1987.