Award No. 1
Case No. 1

PUBLIC LAW BOARD NO. 4178

BROTHERHOOD OF LOCOMOTIVE ENGINEERS	)	
	)	
vs.	)	
	)	Parties to Dispute
CSX TRANSPORTATION, INC.	)	
(Former Seaboard System Railroad,	)	
Former Louisville and Nashville	)	
Railroad Company)	)	

STATEMENT OF CLAIM:

McClure, C. A., Engineer, S&NA Seniority District, Birmingham Division, claim for difference in pay of earnings allowed on Yard Job 101, Oakworth, Alabama, and earnings he would have earned on the Cullman Switcher had he been allowed to properly exercise his seniority and remain on the Cullman Switcher from May 10, 1982 through and including April 30, 1983. Also, claim for 67 auto miles traveled from Cullman to Oakworth and return each date required to work the Oakworth Yard Job.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

Claimant was employed as a fireman on the S&NA seniority district on March 29, 1945. He was subsequently promoted to engineer status and in 1977 was restricted to yard service by the Carrier's District Surgeon as the result of an examination indicating he suffered from coronary artery disease.

As the result of discussions between Carrier and Organization

representatives, Claimant was approved to return to work on the "Cullman Switcher," a six-day road job. We were advised that involvement of the Organization was necessary if Mr. McClure was to hold any assignment as the applicable rule reads as follows:

> "Engineers will not be employed, re-employed, promoted or reinstated for yard service only, except by concurrence of the committee representing the Brotherhood of Locomotive Engineers."

Claimant received physical examinations periodically and the restriction was continued. He had coronary bypass surgery in 1979 and returned to work the Cullman Switcher once again.

In 1981, employees working with Mr. McClure reported to supervision that he was taking a large number of pills during the day. It was also reported that he was making unsafe moves on the job such as moving while others were between the cars. As a result, Claimant was again examined. Based on the results of this examination and data furnished by his personal physician, Carrier's Chief Medical Officer advised Mr. McClure on January 13, 1982, that he was restricted to yard and branch line service only. This action required that he take a yard assignment in order to be employed, as the Medical Officer was no longer willing to allow him to hold the Cullman Switcher which worked on the main line.

The Employees contend that Carrier erred in not permitting Claimant to operate the Cullman job between May 10, 1982 (the day Mr. McCLure first worked a yard job after the restriction) and April 30, 1983, when he voluntarily separated from service under a company incentive plan. The amount claimed is stated to be on

the basis of the 6th day on the Cullman job for 45 weeks plus 67 miles auto allowance daily between the Claimant's residence and Oakworth Yard.

Before proceeding to the merits of this case, it is necessary that certain procedural issues be addressed. The Carrier argues that the Organization is estopped from considering merits under the "separation release" signed by Mr. McClure on May 5, 1983. We have examined this release carefully and do not agree that the instant claim is barred thereby. It is noted subsequent "separation release" forms are more detailed and would kill this claim, but the one signed by Claimant does not.

The Carrier also contends that the Employees are guilty of a Time-Limit-On-Claims-Rule infraction since the claim was not initially filed until more than 60 days had expired "from the date on which the occurrence [medical restriction] is based." While late filing may invalidate a portion of a continuing claim, we do not agree that the whole thing unravels on the 61st day. Accordingly, this aspect of the Carrier's argument is rejected.

The Employees allege that the Carrier was guilty of a time-limits violation on the premise that it had failed to show the status of Claimant's claim on his coded statement of earnings, per Article 30(b)(1). We find that support for this position has not been established in the record before us and it is rejected accordingly.

In view of the above, there is no impediment to this board addressing the merits of the claim.

The Employees set forth the following in support of claim: (1) The physical condition of Claimant was addressed in 1977 and the oral agreement reached at that time should have been continued; (2) The physical condition of Claimant had not subsequently deteriorated; (3) The job description of the Cullman Switcher has not changed; and (4) More severe restrictions impaired Claimant's seniority, deprived him of compensation and placed unwarranted stress, strain and expense on him.

The Carrier argues that the Claimant's physical condition did not stabilize but continued to decline and culminated with a heart attack and by-pass surgery in 1979. Subsequently, his co-workers complained about his performance and the medication he was taking. Then, following additional medical evaluations the Medical Examiner would no longer permit him to work on the main line (Cullman Switcher) and required him to take a yard job. The Carrier further states that the 1977 arrangement for Claimant to work Cullman did not give him the assignment in perpetuity; that is was a conditional matter subject to Claimant's physical condition which subsequently deteriorated; that Carrier did not relinquish its right to medically restrict him to yard service at a later date.

Upon review and study of the entire record in this case, the Board finds the Carrier's position to be more persuasive. Many awards have held that the Carrier has the right to establish reasonable medical standards for its employees. It follows that such standards must be given uniform and non-prejudicial application. There has been no showing in this case that these

precepts were violated.

We do not view the 1977 "agreement" regarding the Cullman Switcher as creating a forever-after right of Claimant to occupy it. It was stated at the time that he was to be re-examined after six months which implies that changes might be indicated. Perpetuity was not expressed or intended in the 1977 arrangement.

We see no support for this claim in the rule under which Claimant was permitted to work the Cullman Switcher for a time. Article 26, 9(a) quoted above does not supply any leverage by which an employee can claim a job of his choice in a medical situation if the Carrier and Organization do not agree. Had either the Carrier or the Organization failed to agree on a position he could occupy, it seems Claimant would not have been able to work any assignment.

This Board is neither empowered nor qualified to make a medical judgement concerning Claimant's physical qualifications or limitations. We cannot evaluate stress and strain of one assignment as opposed to another. These factors have all been taken into account by highly trained physicians whose decision has not been shown to be unreasonable or capricious.

AWARD

Claim is denied.

C. V. Morris
Employee Member

W J Dwonish
Carrier Member

D Keeley
Chairman and Neutral Member

Dated at Jacksonville, Florida, May 22, 1990