

PUBLIC LAW BOARD NO. 1952

Award No. 26
Case No. 28

PARTIES TO DISPUTE:

SOUTHERN PACIFIC TRANSPORTATION COMPANY
and
BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

STATEMENT OF CLAIM:

(a) The Southern Pacific Transportation Company violated the Clerks' Agreement when it improperly withheld Ms. F. B. Lewis from service January 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30; February 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1981; and,

(b) The Southern Pacific Transportation Company shall now be required to compensate Ms. F. B. Lewis for twenty-eight (28) days at rate of Position 324, BB&U Clerk, \$80.28 per day.

FINDINGS:

Because of Claimant's chronic absenteeism due to illness commencing sometime in June or July 1980, the Regional Engineer notified Claimant that she was required to submit to a medical examination. An appointment was made for her to undergo an examination by a Doctor Redfield in Eugene, Oregon on November 24, 1980, in order that a determination could be made of her fitness for duty. As part of his examination, Dr. Redfield referred Claimant to a Doctor McConochie, a Licensed Psychologist. Dr. McConochie evaluated Claimant on December 5, 1980. By letter dated December 19, 1980 addressed

-2-

to Carrier's Chief Medical Officer, Dr. White (who examined Claimant at the request of Dr. Redfield) concluded that Claimant "has diagnoses which impair her ability to work, i.e., allergic diathesis with atopy and hypocondriacal neurosis." Dr. White further stated, "I believe these two diagnoses work synergetically and create a significant problem for [Claimant]." Dr. McConochie's report concluded that Claimant's "test and interview responses are strongly suggestive of functional (emotional) problems manifesting themselves as somatic complaints and preoccupations. Her openness to psychotherapy seems poor at this time, and thus prognosis for overcoming the unproductive psychological processes is poor."

After receiving the reports on December 29, 1980, Carrier's Chief Medical Officer wrote the Regional Engineer on December 31, 1980, advising him that he felt Claimant should "resolve her medical problems prior to her returning to work." Carrier's Chief Medical Officer also suggested that Claimant be advised to take advantage of the suggestions given her by Dr. McConochie, i.e., undergo psychotherapy.

On January 5, 1981, the Regional Engineer advised Grievant that she was removed from service until such time as her medical problems were resolved, and further suggested that she take advantage of the recommendations given her by Dr. McConochie.

By letter dated January 29, 1981, Carrier's Chief Medical Officer wrote Claimant as follows:

I have been in recent contact with Dr. McConochie and following his evaluation, we both agree that it would be in your best interest to receive some psychological assis-

tance at this time. It is your decision as to which therapist you choose to discuss your problems; however, at this time if you were to begin working with Dr. McConochie, I will pay for your first two visits. At that time if you and the Doctor decide to continue therapy, these bills will be sent to Travelers Insurance Company. I am sending a copy of this letter to Dr. White and McConochie and if you have any suggestions, please contact me.

I have not made an appointment for you to see Dr. McConochie as I am leaving this up to you. I encourage you to take advantage of this opportunity.

By letter dated February 2, 1981, Claimant responded as follows:

Reference Mr. Forbis's letter of January 5, 1981, received on 1/6/81 and Dr. Meyers' letter of January 20, 1981, received January 30, 1981, concerning my being held out of service account 'alleged medical reasons.'

Neither letter states what these alleged medical reasons are, and both letters quote suggestions referred to by Dr. McConochie, who is not a medical doctor and therefore, is not qualified to render a medical opinion.

This is official notice that I wish to invoke Rule 62B of the Agreement between Southern Pacific Transportation Company and B of RAC. Please let me know the names of the 'allergy specialist-medical doctor' that the Company decides to appoint. My personal physician is Dr. Candice Rohr, who is an allergy specialist in Eugene.

Also, Dr. Meyers' letter to me does not say anything about not being allowed to work.

Another appointment was made for Claimant to see Dr. White for reevaluation on February 10, 1981. After Claimant was re-examined, Dr. White wrote to Carrier's Chief Medical Officer on February 13, 1981, stating, in pertinent part:

My impression of [Claimant] is unchanged. I believe she has an allergic diathesis with atopy and hypochondriacal neurosis. She is also S/P hysterectomy and S/P thyroidectomy and has exogenous obesity.

At this time I believe [Claimant] is capable of working. She has a severe allergic problem which she accepts and an emotional problem which she denies. She is functional at this time but I suspect that she will continue to have allergic reactions, accentuated by her neurosis that will continue her need for sick leave and medical care.

As a result of Dr. White's report, the Regional Engineer's office was notified, and Claimant was returned to work on February 17, 1981. It is noted that Claimant's first "sick day" following her return to duty on February 17 was not until March 31.

Rule 62(a) reads, in pertinent part:

A regularly assigned employee, including an employee assigned to the Guaranteed Extra Board, who is ordered, in writing by an Officer Company to report for physical examination and found to be in a satisfactory physical condition that would have enabled him to continue in service without interruption shall be compensated as follows . . ."

After reviewing the record, the Board is satisfied that the claim must be denied. It is clear that, during the periods involved, Claimant was not physically or emotionally able to have continued in service without interruption. This conclusion is based on the reports of Dr. White and Dr. McConochie. It is not relevant under the circumstances that Dr. McConochie was not a medical doctor; his conclusions were corroborated by Dr. White, a medical doctor.

Under the circumstances, Carrier was not arbitrary or unreasonable in withholding Claimant from service. It had a right to rely on the reports of the medical doctor and psychologist who examined Claimant.

AWARD:

Claim denied.

Nicholas Rumas
Neutral Member

J. C. Scherling
Carrier Member

R. L. Manton
Organization Member

Date March 2, 1983