

PUBLIC LAW BOARD NO. 2182

Award No. 21

Case No. 22

Docket No. MW-78-65

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company  
-Texas and Louisiana Lines-

Statement of Claim 1. Carrier violated the effective Agreement when Laborer L. P. Odell was not allowed to return to work nor granted a hearing.  
2. Claimant L. P. Odell be reinstated to his former position with all pay for time lost beginning December 22, 1977, and with all seniority, vacation and all other rights unimpaired.

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 May 22, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Laborer took a pre-employment physical examination on May 5, 1976 and was found to be in satisfactory physical condition with a normal back x-ray to be employed as a Laborer.

Claimant worked as a Laborer until October 18, 1977 at which time he requested a transfer to the operating department to work therein as a switchman-brakeman. As a result thereof he was required to take another physical examination which was performed on October 18, 1977. The back-xray taken revealed "bilateral spondylolysis of L5-S-1 - Class V." Spondylolysis was defined as: "a defect in the pars interarticularis" and is placed in Class V category and can be either unilateral or bilateral and can be at any level of the spine".

Carrier, as a result of this abnormal x-ray report, requested the radiologist at the clinic to compare both sets of the spinal x-rays, to wit - the x-rays made in May 1976 and the ones made in October 1977. The radiologist's opinion was that Claimant fell in the category of Class V on both sets of x-rays and disqualified him for service with the railroad. Carrier's Chief Medical Officer thereupon notified Claimant's Division Engineer that Claimant was disqualified from any service with the railroad because of his physical condition.

Claimant was so notified under date of November 3, 1977 by the Division Engineer as follows:

"Records indicate that on October 18, 1977, you requested a transfer from your position as extra gang laborer in the MofW Department in order to accept position in the Operating Department as switchman-brakeman, but that you were not accepted for employment as a switchman-brakeman based on back x-ray findings when undergoing physical examination for service in the Operating Department.

I am now in receipt of advice from Dr. W. P. Wharton, Southern Pacific's Medical Officer at Houston, Texas, that you are disqualified for service - both as laborer and switchman - with the railroad because of the disqualifying back condition. This action is taken in order to protect you from injuring your back."

Claimant requested a hearing, which was denied by the Division Engineer in December 1977.

Claimant notified the Chief Medical Officer that he had been x-rayed by another doctor on November 1, 1978, Consultant's in Radiology, Fort Worth, Texas.

The films thereof were forwarded to the Medical and Surgical Clinic in Fort Worth for interpretation of all three sets of x-rays by Dr. P. D. Beery, Radiologist. Dr. Beery replied to Carrier's Doctor Wharton November 29, 1977, that his analysis thereof had placed Claimant in Class V and disqualified him from employment. Dr. Beery's report, in pertinent part, stated:

"It remains my opinion that this patient has Bilateral Spondylolysis at L5 - S1 which classifies him as a Class V, and apparently therefor makes him unacceptable in any capacity with the railroad."

Carrier's Chief Medical Officer received notification on February 22, 1978 from Dr. Barbara A. Fannin, Forth Worth, Texas concerning recent tomograms performed February 13, 1978 on Claimant Odell. Dr. Fannin stated that it was her opinion that Claimant's tomograms were normal and showed no evidence of spondylolysis (pars interarticularis) on any of the x-rays taken by Consultants in Radiology, Fort Worth. As a result thereof Carrier took all of the x-rays of each examination made of Claimant, including those made by Claimant's doctors, and brought them to Dr's Vaughan and Owsley, Radiologists, Houston, Texas, to be reviewed. As a result thereof Dr. Owsley's report states:

"The four lumbar spine x-ray examinations referenced above were reviewed. They show small bilateral clefs in the pars interarticularis of L5, best demonstrated on the plain oblique views although pathology is also suggested on the tomographic cuts made at the 8 and 9 cm levels."

Carrier's chief medical officer on March 29, 1978 advised Division Engineer that it was still his opinion that Claimant was disqualified as a laborer or a switchman with the Carrier. Dr. Meyer's pointed out that this defect places Claimant Odell back in Class V and therefore makes him unacceptable as for any capacity with the railroad and further stated:

"it is still my opinion that Mr. Odell is still disqualified as a laborer or switchman with the railroad because of the disqualifying back condition, Class V, and this is in order to protect Mr. Odell from injuring his back."

The Board finds that this is not a disciplinary matter, but it is a medical matter. Claimant's removal from service was for purely medical reason and did not involve discipline or dismissal, hence no hearing was afforded Claimant and there can be no violation of Article 14.

It has been long held that Carrier not only has the right but it has the duty and obligation to determine the physical fitness of its employes, and that in the exercise thereof it is wise to accept the recommendations of its Chief Medical Officer.

As was pointed out by Referee Devine in Third Division Award 16284 in denying  
a claim for restoration to service:

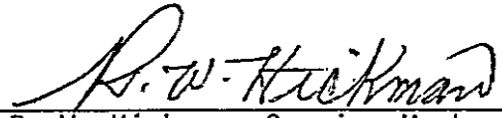
"while we may sympathize with any person who may be as unfortunate as Claimant with regard to his physical condition, it is well recognized that it is the prerogative of Carrier to determine the physical qualifications of its employees so long as its findings are not arbitrary, capricious or exercised in bad faith."

Here the Board finds that Carriers had exercised its judgment in good faith and that Carrier has acted on competent and disinterested medical findings. It was neither arbitrary nor capricious. Consequently, there being no medical dispute involved, the claim herein will be denied.

Award      Claim denied.



M. A. Christie, Employee Member



R. W. Hickman, Carrier Member



Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Wilmington, Delaware, March 31, 1979.