

PUBLIC LAW BOARD NO. 2439

Award No. 90  
Case No. 90

PARTIES  
TO  
DISPUTE

Southern Pacific Transportation Company  
and  
Brotherhood of Maintenance of Way Employees

STATEMENT  
OF CLAIM

- "1. That the Carrier violated the agreement when it refused to give consideration to returning Track Laborer Richard B. Castillo to his former position with the Carrier after being presented with the necessary doctor's release to return to duty.
2. That the Carrier now be required to return Claimant Castillo to his former position with compensation commencing June 10, 1983 forward."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant entered Carrier's service in 1962. In 1970, while at work, claimant suffered an epileptic seizure which caused him to be hospitalized. Subsequently claimant has been on medical leave since August 24, 1970. Beginning in 1976, claimant made an attempt to return to work. He addressed a letter subsequently to Carrier's Vice President dated August 30, 1982, indicating that he had no further medical problem. He presented a medical form dated October 1983 from his attending physician certifying his physical ability to return to work and finally submitted a formal application to return to service on April 2, 1984. The claim herein was filed on April 2, 1984.

As the Board views it, there are two basic problems with this claim. The first with respect to Carrier's insistence that the claim is not timely is meritorious. It is apparent that under Rule 44 claims must be filed within sixty days from the date of the occurrence on which the claim or grievance is

based. In this instance the record reveals that claimant first indicated he was able to return to work in 1976 and, secondly, in 1982 and, finally again, in 1983. Nevertheless, the claim herein was not filed until 1984. On its face, therefore, the claim should be dismissed on this ground alone. In addition, it must be noted, however, that Carrier has had a long established medical practice with respect to employees subject to seizures. In that policy, it is without question that no one can operate a vehicle or power driven work equipment around moving trains and equipment with a history of seizures. Based on that well established policy, there was no work available for claimant even if he could have returned to work based on a timely application for that purpose. Thus, even on that ground, the claim does not have merit. Based on the entire record, therefore, it is this Board's view that the claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman

  
L. C. Scherling, Carrier Member  
C. Foose, Employee Member

San Francisco, California  
August 27, 1985