

PUBLIC LAW BOARD NO. 2908

Award No. 1

Case No. 1

Parties Brotherhood of Railway Carmen of U.S. and C.

to and

Dispute Norfolk and Western Railway Company

Statement of Claim 1. That in violation of Rule No. 37 of the Current Agreement Up-Graded Carman C. W. Williams, was arbitrarily removed from all service of the Carrier on June 28, 1979, and was denied his Contractual rights to a fair and impartial Hearing as required by the aforementioned Rule No. 37 of the Current Agreement.

2. That accordingly the Norfolk and Western Railway Company be ordered to reinstate Up-Graded Carman C. W. Williams.

a. with his seniority unimpaired.

b. and he be made whole and compensated for all lost wages, including his vacation rights.

c. that he be paid 6% annual interest on all wages lost from June 28, 1979, until such time as he is reinstated.

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 January 29, 1981, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, C. W. Williams, was employed by the Norfolk & Western Railway Company for a period of approximately seven (7) years.

At the time of the instant claim, Claimant was working as an Up-Graded Carman at Crewe, Virginia.

On April 30, 1979, Claimant was involved in an automobile accident, suffering multiple facial lacerations necessitating a stay of approximately three (3) days at the Chippenham Hospital for treatment. Claimant was discharged from the hospital on May 2, 1979, but remained under the care of Dr. Douglas S. Rowe until June 4, 1979, at which time Claimant was released to return to work. On June 8, 1979 Claimant was examined by company physician, Dr. R. H. Godsey, and determined that Claimant was sufficiently recovered from his injuries suffered in the automobile accident to return to work, pending final approval of Carrier's Medical Director. Claimant returned to work on June 13, 1979.

Under date of June 26, 1979, Medical Director R. W. Edmonds advised Claimant's supervisor that he had received a report of medical examination of Claimant, and Claimant was to be withheld from service pending receipt of additional information from Chippenham Hospital. Claimant was relieved from service as of June 27, 1979.

Upon receipt and evaluation of medical information from Chippenham Hospital, Medical Director Edmonds disqualified Claimant from all service on July 2, 1979. The medical history from Chippenham Hospital disclosed that Claimant had been admitted to that hospital in August, 1977, with a fainting spell and, later, a grand mal seizure, and again in January 1978, with a history of two (2) grand mal seizures.

The instant dispute arises from this removal from service of Claimant on June 27, 1979, pending receipt of medical information, and subsequently, his disqualification from service as a car repairer (Up-graded) on July 2, 1979, for medical reasons relating to a recurring history of fainting spells and seizures.

Claimant appeared at the hearing before the Board, was represented by his Organization, and advised that he was satisfied in the manner in which his case had been presented to the Board. Claimant advised the Board that he had performed his duty without incident or affectation from the condition that he was treated for at the Chippenham Hospital. He advised the Board that he is still under treatment by his physician, Dr. Rowe, and is still taking medication therefore. Claimant advised the Board that he does not feel that he still suffers from the condition, but that he is continuing to take the medication for treatment under advice of his physician as a precautionary measure.

Organization submitted in support of Claimant's statements a petition signed by an array of fellow employees all of whom attested to the fact that they had worked with, and known, Claimant since his employ with the railroad; that Claimant had performed his duty efficiently without incident or mishap that would have been detrimental to himself or his fellow employees.

Additionally, Organization argues that Claimant was deprived of his procedural right to a hearing prior to Carrier's arbitrary and capricious removal of Claimant from Carrier's service as provided by Rule No. 37. Rule No. 37 in pertinent part, reads:

"No employee shall be 'disciplined' without a fair hearing by a designated officer of the Carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee will be appraised of the charge against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses, without expense to the Company, and shall have the right to be there represented by the duly authorized committee. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

Organization contends that it was an arbitrary, capricious and unfair judgment of Carrier to (1) remove Claimant without benefit of a disciplinary hearing, and (2) that in view of the incident-free history that Claimant has demonstrated, that it is palpably unfair to withhold him from service so long as Claimant continues to take his medication.

Carrier addresses the claim by denying that Claimant was denied of his procedural due process as afforded by Rule 37. Carrier avers that Claimant's physical condition does not meet the minimum standards of the physical demands for the position of carman as established by the medical section of the AAR. The standards adopted May 18, 1979, apply to in-service employees and under brain and nervous system thereof, state, in pertinent part:

"Must have no convulsive disorder treated or untreated. Must have no progressive neurological disorder likely to interfere with the safe performance of assigned duties. Must have sense of balance with freedom from vertigo or syncope."

(Emphasis added)

Carrier argues that Claimant was deprived of no procedural rights, since he was not disciplined, but rather, administratively removed from his position as carman due to his medical disqualification. Carrier contends that Claimant's disqualification continues, and so long as he is under treatment and can produce no affirmative proof that he no longer suffers from syncope or neurological disorder he will and must remain disqualified from service. Carrier argues that it is a managerial prerogative to establish minimum medical standards in the interest of all employees and the public. Carrier contends that Claimant experienced administrative removal not discipline.

Based upon the record before the Board, the submission of the parties, and the evidence presented, coupled with Claimant's candid statements to the Board, we are impelled to conclude that Claimant had, and has, a continuing medical disqualification. Notwithstanding Claimant's representations, supported by the petition of his fellow employees, that he has never experienced any adverse affects while discharging his duties for Carrier, the Board is without authority to alter, change or compromise the reasonable medical standards established by Carrier for all of its employees. In support thereof we cite First Division Award 17934, which in pertinent part, reads:

"The Carrier contends that this claimant has never submitted any medical evidence which is in conflict with the findings and opinion of its medical psychiatrist and therefore the claimant's request to this Division for the appointment of a medical board to examine the claimant should be denied.

'The carrier has the right and responsibility to determine, within proper limits, the physical fitness of its employes and it is also true that the employe has the right to priority in service according to his seniority and pursuant to the agreement so long as he is physically qualified. Where these two rights come into collision, it has been consistently held by this Division that it has jurisdiction to determine whether the employe has been wrongfully deprived of service.

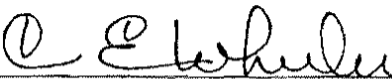
(Award 17 646). When the carrier, through its medical staff has removed an employe from service in good faith, on the basis of a fair standard of fitness, applied to his physical condition, the employe only has the right to reinstatement when he has submitted to the carrier competent medical evidence of his required physical fitness which challenges the finding and recommendation of the carrier's medical examiner. This claimant has never submitted to the carrier competent medical evidence of the physical fitness required by the carrier and only when such evidence has been submitted can this Board take under consideration the right of the claimant to have a medical board appointed to pass upon his required physical fitness."


(Underscoring supplied)

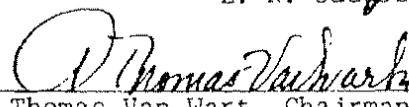
In view of Claimant's admitted continuing condition, we need not reach the other issues raised in the claim. Claimant was not "disciplined" by Carrier, rather, he was administratively removed from service because of a physical disqualification that was found to be in conflict with the reasonable medical standards promulgated by Carrier and encompassing Claimant's position.

For the reasons set forth above this claim must be denied.

Award Claim denied.

  
C. E. Wheeler, Employee Member

  
E. N. Jacobs, Jr., Carrier Member

  
A. Thomas Van Wart, Chairman  
and Neutral Member