

PUBLIC LAW BOARD NO. 3530

Award No. 9
Case No. 9

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Section Foreman, Leonard Muncy, 613 Albemarle St., Bluefield, WV 24701, was denied the right to return to work after being off on disability. Employees request Mr. Muncy be paid at the Section Foreman's rate of pay starting October 11, 1982.

FINDINGS:

On October 7, 1975, Claimant sustained a back injury while on duty in Carrier's employ. Claimant later underwent surgery and remained out of service due to his injury. He then filed suit against Carrier in the Federal District Court for the Southern District of West Virginia. The suit sought \$500,000 in damages for lost wages, medical expenses, fringe benefits and eighteen years of future service. The complaint filed on Claimant's behalf alleged that his injuries were of a permanent nature.

The suit came to trial on April 1, 1980. During the trial, Claimant's doctors testified that his injuries were permanent and that in the future Claimant would be unable to perform the duties of a laborer or section foreman. At the conclusion of the trial the jury awarded Claimant \$190,000 in satisfaction of his claim.

On October 11, 1982, Claimant reported to Carrier's facility in Bluefield, West Virginia and requested that he be allowed to return to service. His request was supported by doctors' statements to the effect that Claimant was physically capable of resuming his former duties. The request was denied, and the Organization filed a claim requesting that Claimant be compensated for all pay lost since October 11, 1982. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Public Law Board for resolution.

The issue to be decided in this dispute is whether Claimant was improperly refused the right to return to service, and if so, what should the remedy be.

It is the opinion of this Board that, based on principles of estoppel, the instant claim should be denied. Estoppel is a rule of law that states that a party who obtains relief from an adversary by making a particular assertion will not be allowed, at a later time, to obtain relief from the adversary through an opposite or contradictory assertion.

In the present case, the record shows that Claimant obtained relief from Carrier by convincing a jury that he was permanently disabled and forever unfit to resume his duties in Carrier's employ. Claimant now argues that he is physically fit to return to work and should be compensated for all time held out of service. The earlier jury award was intended in part to compensate Claimant for a loss of future earnings. To allow Claimant to recover in the present case would be to compensate him twice for the same loss. Such an award would unjustly enrich Claimant at Carrier's expense.

For the reasons stated above, it is the decision of this Board that the claim must be denied.

AWARD:

Claim denied.

Nicholas Kumer
Neutral Member

P. A. Albrecht, Jr.
Carrier Member

Bryce L. Hall
Organization Member

Date: 4/27/84