

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 18
)
) Award No. 9
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: May 12, 2000

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier withheld Section Foreman T. A. Cox from service on September 26, 1997 through November 23, 1997 (System File N-589/1111997).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be compensated for all wage loss suffered as a result of his improper removal from service.

FINDINGS:

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On August 8, 1997, Claimant successfully bid on a track foreman position, effective September 20, 1997. Claimant presented to his supervisor a letter from his psychiatrist, dated September 19, 1997, which stated:

[Claimant] has been under my care for treatment of anxiety for several years. It has come to my attention that with his transfer from track inspector to section foreman, his attendance at monthly safety meetings has become a significant source of stress and anxiety. It is my opinion that it would be best for [Claimant's] condition if he can be excused from these meetings.

By letter dated September 29, 1997, Claimant's supervisor notified him that he would be subject to a medical review. The letter further instructed Claimant to contact Carrier's Employee Assistance Hotline. It advised Claimant, "[Y]ou may remain in service pending the medical review results." It further stated that upon contacting the Hotline, Claimant would receive further instructions concerning "Fitness-for-Duty evaluation appointment(s) you will need to undergo before obtaining medical clearance for return-to-work."

Thereafter, Claimant was notified orally that the September 29, 1997, letter's indication that he could remain in service pending the medical review was incorrect and he was withheld from service. Carrier confirmed this in writing on October 23, 1997.

Claimant contacted Carrier's EAP and was examined by a psychologist. By letter dated October 4, 1997, and received by Carrier on October 18, 1997, the psychologist recommended that Claimant undertake a comprehensive stress management program, including anger management and conflict resolution training, in addition to continuing to see his psychiatrist. Based on this report, Carrier determined that Claimant was not fit to return to service and advised Claimant to enroll in an anger management program through the EAP. Claimant did so and on November 18, 1997, the treating psychologist issued a report clearing Claimant to return to work. The report was faxed to Carrier on November 20, 1997, and on November 22, 1997, Carrier advised Claimant that he was released to return to service. Claimant returned to service on November 25, 1997.

It is well-established that Carrier has the right to withhold employees from service for medical reasons. Carrier is charged with the responsibility for the safety of the employees and its decisions to withhold employees for medical reasons should not be second guessed by a reviewing tribunal. The Board should overrule such a decision only where it is shown to have been made in bad faith or to have been arbitrary or capricious.

The Organization contends that it has shown the decision to withhold Claimant from service was arbitrary and capricious. Specifically, the Organization points to the September 29, 1997, letter sent to Claimant which advised him that he could continue working during the medical review. Furthermore, the Organization contends that Carrier acted arbitrarily and capriciously when it withheld Claimant from service on September 29, 1997, and when it failed to return him to service after the psychologist's report in October.

It is clear from the record that the statement in the September 29, 1997, letter that Claimant could continue to work during the medical review was a clerical error. Indeed, the remainder of the letter advised Claimant of the procedures to follow to determine whether he would be cleared to return to service. Claimant was advised orally of the error in the letter and this advice was subsequently confirmed in writing. We are unable to attribute any significance to the clerical error in the September 29, 1997, letter.

The decision to withhold Claimant from service was prompted by the September 19, 1997, letter from Claimant's treating psychiatrist. The letter indicated that it would be best for

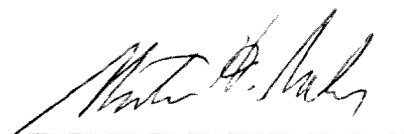
Claimant's anxiety condition if he could be excused from attending safety meetings. Evidence that Claimant's mental health might be adversely affected by participation in mandatory safety meetings certainly provided cause for concern with respect to Claimant's condition. We cannot say that Carrier's decision to withhold Claimant from service pending medical review was arbitrary or capricious.

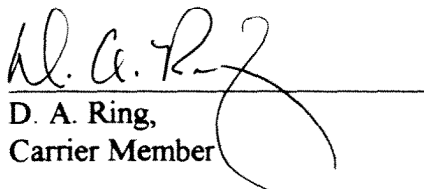
The October 1997 report from the examining psychologist did not expressly release Claimant to return to work, nor did it expressly recommend that Claimant continue to be withheld from service. It did recommend that Claimant enroll in a comprehensive stress management program and that Claimant not attend safety meetings until his psychiatrist or the treating psychologist providing the stress management program "can evaluate if the risk of assault is reduced." The evaluating psychologist further indicated that he would fax a copy of the report to Claimant's psychiatrist to consider whether to warn Claimant's supervisor "about the vague but possible risk of assault." The report also expressed concern that without the recommended intervention, the conflict between Claimant and his supervisor could "erupt in violence," and could "become a chronic disabling condition." In light of the contents of the examining psychologist's report, we cannot say that Carrier acted arbitrarily and capriciously in referring Claimant to its EAP for anger management counseling and in not returning him to service.

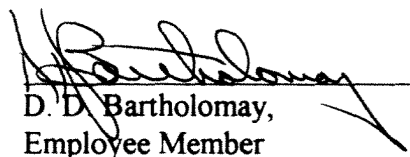
On November 18, 1997, the treating psychologist providing Claimant with anger management counseling released him to return to duty. Carrier received the recommendation two days later and notified Claimant of his release two days thereafter. Claimant returned to duty on November 25, 1997. It is clear that, upon receiving the treating psychologist's report, Carrier moved quickly to return Claimant to service. Based on the record of how carrier handled this matter, we are unable to say that Carrier was arbitrary or capricious or acted in bad faith.

AWARD

Claim denied.


Martin H. Malin, Chairman


D. A. Ring,
Carrier Member


D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, July 6, 2000.