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AWARD NO. 8
CASE NO. 8

SPECIAL BOARD OF ADJUSTMENT NO. 171

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
vs
GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the rules of the current agreement,

"1. When on July 17, 1955 they removed from service one Konsta Valley, an ore dock employe at Allouez, Wisconsin, account failure to pass physical examination.

"2. That the Carrier now be required to compensate Konsta Valley at his regular rate of pay for July 17, 1955 and each and every day thereafter that he was not allowed to perform service account of this violation.

FINDINGS: This Special Board of Adjustment upon the whole record and all the evidence, finds that:

The carrier and the employe or employes in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Special Board of Adjustment has jurisdiction over the dispute involved herein.

The claim in this case involves Konsta Valley, an ore dock employee who operates a crane at Allouez, Wisconsin, asking reinstatement to service with all pay lost from July 17, 1955, due to the Carrier wrongfully withholding him from service.

The claimant failed to pass a periodical physical examination required by the Carrier. The examination was given by Dr. R. C. Webb on June 18, 1955. The claimant was notified by the carrier on June 24, 1955 that he could no longer be continued in service due to high blood pressure, obesity, diabetes and a hypertension heart.

The claimant had received periodical examinations and from April 2, 1941 carrier's medical record shows that the claimant had been warned to do something about his weight, and that April 1, 1946 the claimant was informed that he had high blood pressure and treatment was recommended. Since April 19, 1950 the claimant has been under the care of his personal physician Dr. H. E. Bakkila who had given him a comprehensive examination and treatment and whose diagnosis stated that the claimant had "essential hypertension". The claimant has been periodically

treated by his personal physician up to July 21, 1955, on which date his personal physician, Dr. H. E. Bakkila still diagnosed hypertension and was treating him for obesity. The claimant was also examined by a Dr. McGinnis, who stated on July 27, 1955 that he had treated the claimant for hypertension. The claimant was also examined by a Dr. Charles J. Picard, whose only statement is that the claimant's blood pressure ranged between 160 and 170 systolic and 90 diastolic.

Rule 18 of the effective agreement is a discipline rule, and has no application to a request for return to service under the facts in this case.

The carrier contends that this claimant has never submitted any medical evidence which is in conflict with the findings and opinion of its medical examiner.

The only conflict in the evidence in this case is in the findings of Dr. Bakkila on July 21, 1955 that in his opinion "he (the claimant) is able to continue in his usual occupation." There is no conflict in the diagnosis of the carrier's medical examiner with the diagnosis of the claimant's personal physician that the claimant is suffering from hypertension. Therefore, when Dr. Bakkila states that the claimant is able to continue in his usual occupation there is no showing that this doctor knew what physical requirements were necessary to operate a crane or that he knew the occupation of this claimant.

The carrier must not only take into consideration the health and welfare of this claimant, but the welfare of all of its employees working in the vicinity of the crane and the public that might come into that vicinity.

The Board finds that there is no conflict as to the physical well being of this claimant between the diagnosis given by his personal physicians and the diagnosis given the carrier by its medical examiner. Therefore, the agreement was not violated by the carrier's action herein.

A W A R D

Claim denied.

/s/ Thomas C. Begley
Thomas C. Begley, Chairman

/s/ C. A. Pearson
C. A. Pearson, Carrier Member

/s/ F. A. Emme
F. A. Emme, Employee Member

Signed at St. Paul, Minnesota, this 10th day of April, 1957.