

SPECIAL BOARD OF ADJUSTMENT NO. 1016

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

CONSOLIDATED RAIL CORPORATION

Award No. 27

Case No. 27

STATEMENT OF CLAIM

(1) The Carrier violated the Agreement when it failed and refused to comply with the General Chairman's written request dated April 20, 1987 to establish a Board of Doctors in accordance with Rule 29 to examine Mr. S. L. Setty.

(2) The Carrier also violated the Agreement when it failed and refused to permit Mr. S. L. Setty to return to work beginning April 16, 1987 (System Docket CR-3084).

(3) As a consequence of the violation referred to in Part (1) above, the Carrier shall be required to comply with Rule 29 and promptly establish a Board of Doctors to examine Mr. Setty.

(4) As a consequence of the violation referred to in Part (2) above, Mr. Setty shall be compensated for all wage loss suffered beginning April 16, 1987 and continuing until the violation is corrected.

FINDINGS

Claimant S. L. Setty was employed by Carrier in the M&W Department on the Columbus Division. On October 7, 1986, he suffered a seizure while operating a hydrospiker. On April 8, 1987, Claimant was examined by Carrier's doctor to ascertain his ability to return to work. Claimant had been off because of the seizure and also layed off because of lack of work. It was concluded by Carrier's doctor that Claimant could return to work, but under severe restrictions. He could not work around machinery, use dangerous equipment, operate a motor vehicle, etc. In short, because of his seizure and the fact that he was taking Dilantin, Carrier applied the restrictions contained in its medical standards pertaining to disturbances of consciousness and seizure disorders. (See Appendix 3 to Carrier's Medical Policy.)

After a review of the situation, Carrier Officials concluded that there was no job in the M&W Department that Claimant could perform, given the restrictions he was required to work under. Petitioner requested that Carrier set up a three-doctor panel, as required by Rule 29 of the Agreement, to determine if Claimant was or was not fit for duty.

Carrier refused to set up the three-doctor panel on the basis that Claimant was not being held out of service. He was in fact cleared for duty, but on a restricted basis. No jobs existed that he could do given the restrictions that applied under Appendix 3.

This Board has reviewed the record and we are compelled to conclude that Carrier was within its rights to establish medical requirements for an employe to meet and that the restriction placed on an employe who has experienced a seizure is not unreasonable. Given the danger involved in railroad work, especially maintenance of way work, and the financial exposure of Carrier if there are accidents, it is clearly within Carrier's province to set medical standards to protect itself, as well as the employe.

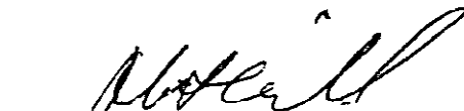
In the instant case, Claimant was cleared to work, but under limited duty requirements. No such jobs existed in the M&W Department and Carrier is not obligated to develop such assignments. As to Petitioner's request for a three-doctor Panel under Rule 29, this Board is not persuaded that Rule 29 applies in this instance. Claimant is covered under Appendix 3 of the Medical Policy. That Policy directs that employes who have experienced seizures be restricted in their work environment. Carrier had no restricted jobs available. A review of Claimant's health by a three-man doctor Board would not have changed the fact that he was restricted in what work he could perform under Appendix 3. Claimant's personal physician could have supplied more material about Claimant's condition if in fact it was felt that Claimant was in better health than Carrier considered him to be in. No such material is contained in this record.

This Board is of the opinion that Carrier acted in this instance in accordance with its medical policy and in the best interest of itself, Claimant, and all employees with whom he might work.

AWARD

The claim is denied.


R. E. Dennis, Neutral Member


R. O. Neil, Carrier Member


S. V. Powers, Employee Member

September 18, 1989
Date of Adoption