

The First Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(United Transportation Union
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Claim is made on behalf of ENGINEER T. G. ROBERTSON for payment of one (1) basic day's pay at the applicable rate commencing with July 19, 1988, and each calendar day thereafter up to and including January 25, 1989, account of being improperly withheld from the service."

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

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

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

Parties to said dispute waived right of appearance at hearing thereon.

Claimant first became employed as Brakeman on June 17, 1978. Subsequent to that date he made a request for transfer into engine service under the provisions of Article VIII of the 1978 National UTU Agreement which required Carriers to give preference to UTU represented employees for promotion to engine service prior to hiring individuals who had not established seniority in any craft with the Carrier. Claimant transferred to engine service and was promoted to Engineer on June 9, 1986.

After working as an Engineer for less than two years Claimant attempted to transfer back to train service. Carrier refused to permit the transfer by reason of Section 3 of Article VIII of the 1978 National UTU Agreement, reading:

"An employee accepting transfer to a fireman (helper) position in accordance with this Article VIII shall retain his seniority standing and all other rights in train and/or yard or hostling service. However, such employee shall be permitted to exercise such rights only in the event he is unable to hold any position or assignment in engine service."

on the basis that he was able to work in engine service.

Claimant made repeated attempts to return to train service, all of which were rejected because he had not been furloughed from engine service.

On July 11, 1988, Claimant presented Carrier with statements from his Doctor and Dentist indicating that his job was causing anxiety and fatigue and excess teeth grinding. Both recommended a reduction of stress in his working environment. The Doctor concluded that it would be in Claimant's best interest if he were transferred back to his former Brakeman's assignment.

After reviewing the opinions submitted by the Doctor and Dentist, Carrier removed Claimant from service "...until such time as [he was] medically/psychologically able to return to work." In the next several months Claimant received treatment for his condition and on January 12, 1989, his treating Doctor authorized a "...return to work without any limitations." Claimant was immediately scheduled for a complete physical by a Carrier Doctor, which he had on February 6, 1989. He was returned to service on February 17, 1989.

The Claim before this Board seeks compensation for the time that he was out of service. The Organization contending that holding Claimant out of service was tantamount to discipline.

We do not agree. Claimant's Doctor indicated that he was suffering from acute stress. His report stated that Claimant indicated that "...this new job is eating me up." It entailed more responsibility than he was willing to cope with. Claimant lived in fear of something going wrong, causing a wreck or injuries. Claimant indicated that he awakens six or eight times a night which causes chronic fatigue. He also suffers nightmares and severe teeth grinding.

Obviously, it was Claimant's physical and mental condition which triggered his disqualification. There are many Awards of this Board, as well as various Public Law Boards, which conclude that withholding an employe from service because of physical and/or mental considerations is not a disciplinary suspension.

In this matter we find that Carrier had a reasonable basis for withholding Claimant from service. Moreover, when it received appropriate information that he was now able to resume his duties, without any medical restrictions, Carrier promptly proceeded to have him examined by its Physician. When this examination developed that Claimant was qualified to return to duty he was restored to service. Accordingly, Carrier cannot be said to have acted improperly in this matter.


The Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of April 1990.