

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Form 1

Award No. 24263
Docket No. 43801
93-1-91-1-C-4555

The First Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
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(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"Engineer R. L. Canon, Central Division (Kansas City District) requests that this Board reinstate him to service and compensate him for all time lost beginning September 13, 1990 until claimant is permitted to resume compensated service. Claimant is currently being held from service by carrier on the assumption that he is not physically fit for service. Furthermore, inasmuch as claimant accepted awarded monetary damages caused on an off-the-property accident, claimant should not, according to carrier, be considered available to return to the capacity of locomotive engineer with the C&NW.

The Organization's position is that this judgment against the Motel, or C&NW had they been held liable, did not terminate claimant's employment or bar his right to return to service when physically fit, on the C&NW. Only if there had been a release of seniority rights, and there was none, may carrier drop claimant from the roster. The record will establish that claimant did not sign such a release that would permit carrier to drop claimant from the roster.

Claim premised on CGW Articles 33, Section 5, and 37, Employees' Exhibit A, and numerous First Division Awards."

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 employe 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 were given due notice of hearing thereon.

Claimant was employed by Carrier as a locomotive engineer assigned to pool service operating in Kansas City, Missouri. On May 10, 1988, Claimant was assigned to a road trip from Kansas City to Des Moines, Iowa. Tying up in Des Moines, Claimant checked into a Carrier contracted hotel where he sustained injuries, mostly to his neck, when he tripped over loose carpeting. Claimant filed a lawsuit in the United States District Court of the Southern District of Iowa claiming permanent disability. On May 25, 1990, Claimant requested from the Carrier a leave of absence from May 30, 1990 to November 1990.

On June 26, 1990, Claimant was awarded in excess of \$239,000 for his permanent disability.

On July 10, 1990, Claimant doctor released him back to work on a trial basis. The Carrier requested additional medical information from the Claimant and based on these records and the court case dispute, the Carrier placed the Claimant on medical hold and did not allow his return to work.

The Organization contacted the Carrier contending that the Claimant had a right to return to work and a claim for all time lost beginning September 13, 1990.

The Carrier responded by citing Award No. 21 of Public Law Board 1660 which in part states:

"The difficulty in complying with the Claimant's request for a Board of Physicians is that there was a full blown court proceeding on the issue of the Claimant's disability and a jury found after hearing competent and substantial medical evidence that the Claimant was substantially disabled. A jury does not award a verdict of a quarter of a million dollars to plaintiffs who are temporarily or casually injured."

The Carrier then denied the Organization's claim and did not allow the Claimant to return to work.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier improperly has barred the Claimant the right to return to work simply because he received an award of monies resulting from his injury. This Board understands the Carrier's argument that the Claimant contended in his court case that he was permanently disabled as a result of the injury and, consequently, was awarded nearly a quarter of million dollars. The Claimant then released the motel, but did not voluntarily relinquish his seniority rights with the Carrier.

It is possible that the Claimant did fully recover from his injuries. However, this Board is not in a position to determine whether or not the Claimant is physically fit enough to return to work.

Consequently, this Board must find that the Carrier arbitrarily removed the Claimant from the seniority roster without justification or a resignation by the Claimant. The Carrier is without authority to do that.

This Board finds that the Carrier and the Organization must form an independent panel of qualified doctors to complete a physical examination of the Claimant in an effort to determine whether or not he is physically fit to return to work. The record reveals that the Claimant's doctor released him for service on July 10, 1990. He was then given an examination by the Carrier in August of 1990. This Board further orders that the monetary award received by the Claimant not be considered by the doctors in making their determination as to whether or not this Claimant is in a physical position to return to work.

The Carrier and the Organization are ordered to convene a tripartite panel of doctors who will independently evaluate the Claimant's condition and determine, without being given knowledge of the previous monetary award to the Claimant, whether this Claimant is physically fit to return to his work as an engineer. If the panel determines that he is physically fit, then he shall be returned to work, but without back pay. This Board is not in a position to determine whether or not the Claimant was physically fit for the past three years; and, therefore, we are without sufficient evidence to award back pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest: *Catherine Loughrin*
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 8th day of November 1993.