

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (Former SCL)

STATEMENT OF CLAIM:

1. The CSX-Transportation Company violated the controlling agreement effective January 1, 1968, as amended, in particular Rule 18(b), when it failed to handle promptly a case involving sickness which is an improper practice which may be handled as unjust treatment under the controlling agreement.

2. The CSX-Transportation Company further violated the provisions of Rule 40 of the controlling agreement by disallowing Claimant to return to work as soon as he was able to do so as outlined in said rule.

3. In addition, the CSX Transportation Company violated the provisions of the controlling agreement, in particular Mediation Agreement, Case No. A-9016, effective February 1, 1973, when it refused Claimant's medical records and denied a physical examination by a neutral physician as outlined in said Mediation Agreement.

4. That accordingly, the CSX-Transportation Company be ordered to grant Electrician Orland Holton, ID No. 174256 compensation for eight (8) hours each work day at the pro rata rate for all lost wages beginning sixty (60) days preceding the filing of the initial claim (December 5, 1988) as a result of carrier refusing to allow Claimant to return to service, to be made whole for all vacation rights, made whole for all health and welfare and insurance benefits, made whole for pension benefits, including Railroad Retirement and Unemployment Insurance, and made whole for any other Unemployment insurance, and made whole for any other benefits that Claimant would have earned during the time he was held out of service.

FINDINGS:

The Second 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.

The Claimant entered into a "Settlement and Final Release of All Claims" on June 2, 1988, in which he accepted an amount of money as full settlement and satisfaction concerning his Federal Employee's Liability Act litigation.

On August 12, 1988, the Claimant sought to return to work since he then alleged that he was physically qualified. The Carrier's Medical Department advised that the employee's sworn testimony and medical evidence presented in the recent litigation precluded such a return and because of unequivocal statements of permanent inability to work the Claimant was estopped from claiming otherwise. This claim ensued.

The parties have argued time limitations, asserted waivers of same, continuing claim liability, etc. Our resolution on the merits of the dispute make it unnecessary to reach a conclusion on those assertions.

Although there is an assertion that certain documentation was not handled while the dispute was under active review on the property, the initial denial referred to evidence and testimony presented in "recent litigation." It is appropriate for this Board to review that testimony. The Claimant clearly insisted that his back injury had precluded him from working for the Carrier or to obtain any other work as an electrician in the entire city of Jacksonville. Certain of that testimony was given in late 1987, but when the Claimant signed a final release in June of 1988, he obviously still relied upon those representations.

The Carrier has cited a number of Awards on the concept of estoppel which have precluded a Claimant from taking one position in one forum while maintaining another position when it is to his advantage. Regardless of the legal label to be affixed in general terms in cases not before us, we are of the view that this record clearly shows that the Claimant sought to take action in diametric opposition to his assertions which enabled him to obtain a \$95,000. settlement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1991.