

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(CSX Transportation, Inc. (formerly The Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the CSX Transportation (hereinafter "carrier") violated Rules 37 and 38 of the Shop Crafts Agreement between Transportation Communications International Union -- Carmen's Division and CSX Transportation, Inc. (Chesapeake and Ohio Railway Company) (revised June 1, 1969) when the carrier removed Painter T. M. Kearns (hereinafter "claimant") from service for alleged medical reasons on April 19, 1989.

2. That accordingly, the carrier be ordered to return the claimant to service; that he be allowed compensation for all time lost as a result of his unjust removal from service; that he be made whole for vacation rights; loss of health and insurance benefits; pension benefits including railroad retirement and unemployment insurance, and any other benefit of employment he would have earned during the period of his unjust suspension; and that the carrier allow claimant interest on said compensation and time lost at the prime rate now in effect.

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.

Under date of April 18, 1989, the Claimant was advised by the Carrier's Chief Medical Officer that because of information received by the Carrier from the Claimant's treating chiropractor he was deemed medically unqualified to continue covering his assignment and his Supervisor would be notified accordingly. On the following day the Claimant was advised by the Plant Manager at Raceland Car Shop, Russell, Kentucky, that he was medically

unqualified to continue his duties and he was furloughed. The Claimant was found medically unqualified because his treating chiropractor's opinion was that the Claimant be restricted to working eight (8) hours per day. Thereafter a claim was filed on grounds that the Claimant was improperly removed from service. Because of changing work load in the Car Shop the Claimant was returned to work on April 24, 1989. On that date the Plant Manager informed the Claimant that thereafter there would be "...no forced overtime" at the Paint Shop at Raceland.

This is a companion case to Second Division Award 12385 already ruled on by the Board. The issue at bar is whether the Carrier has the contractual right to furlough an employee whose attending physician or, in this case, chiropractor indicates that he ought not to work overtime but that the employee, nevertheless, is fully able to work a full eight (8) hour day. The contractual provisions at stake in this case, found in Rule 11, are parallel to those of the earlier case cited above. The differences between the two cases only lie in the facts that the Claimants are different, the medical issue is different, and the dates of furlough are different.


The reasoning and conclusions found in Award 12385 are incorporated herein by reference and need not be reiterated by the Board. The claim is sustained. All monies due to the Claimant, because of having been laid off by the Carrier from April 19, 1989 through April 24, 1989 shall be paid to him on pro rata basis. Interest on these monies, as part of relief requested, is denied for the same reasons as stated in Award 12385.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1992.