

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 G. Baker (hereinafter "claimant") from service for alleged medical reasons on March 29, 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 March 28, 1989, the Claimant was advised by the Carrier's Chief Medical Officer that because of information received by the Carrier from a hospital in which the Claimant had been admitted for treatment beginning in February of 1989 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 subsequently found medically qualified to return to work on April 21, 1989, and effectively returned to service on April 24, 1989. A claim was filed on grounds that the Claimant had been improperly removed from service. Absent resolution of the claim on property it was docketed before the Second Division of the Railroad Adjustment Board for final adjudication.

This is a companion case to Second Division Award 12385 already ruled on by the Board albeit the facts of this case appear to be somewhat less clear-cut than that earlier case since here the Carrier states at one point that it learned about a potential medical condition which the Claimant had, from a hospital, as noted above, and at another point it states, in the record, that it had obtained information that the Claimant was not able to work but eight (8) hours per day from the Claimant's personal physician and on basis of that information furloughed him. If the latter is true, then the facts of this case are that the Carrier learned from a doctor from the hospital about the Claimant's situation and thereafter made a decision to disqualify him. As far as the Board can determine, the latter is the most correct rendition of the facts it can ascertain from the record. Such conclusion is supported by the Carrier's letter dated April 23, 1990 to the Organization's General Chairman where the following is stated, in pertinent part:

"Claimants' personal physicians determined that the Claimants' physical conditions were such that they could not work more than eight hours per day. Based upon that medical information that it may be hazardous to their health and safety, and possibly the safety of others, Carriers' Chief Medical Officer ruled that they were restricted to positions which required no more than eight hours of service per day. Claimants' positions as painters did, in fact, require that they work overtime (more than eight hours per day); and, as stated, based upon the findings of their own personal physicians, Claimants were not medically qualified to work them."

The issue at bar in this case, therefore, as it was in earlier Second Division Award 12385 is whether the Carrier has the contractual right to furlough an employee whose physician indicates that he ought not to work overtime but that the employee, nevertheless, is fully able, as far as the Board can determine, in this case too, 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 albeit there is some divergence of facts. 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 March 29, 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. Dexter - Executive Secretary

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