

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (A. Maxine Lewis  
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Harassment and unjust removal from service for the period of January, 1986 until May, 1988 when Ms. Lewis was returned to service, all lost earnings due are requested as a part of this appeal."

FINDINGS:

The Third 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 were given due notice of hearing thereon.

The chronology of the events leading to this issue are outlined below.

In August, 1985, the Claimant was assigned to work as a Train Clerk in Tower C of the Bensenville Yard. As a result of her alleged reaction to tobacco smoke, she filed an injury report on August 29, 1985, claiming injury on August 22, 1985. On or about September 4, 1985, the Carrier responded by prohibiting smoking in her designated area if any employee objected.

In the interim, on August 30, 1985, the Carrier sent the Claimant notice to appear at an Investigation concerning the timeliness of the submission of her injury report. On November 18, 1985, the Claimant's personal physician submitted a letter stating his medical opinion that the Claimant should not work the night shift due to rheumatoid arthritis. Regardless, the Claimant continued to work all shifts through January 23, 1986.

On January 27, 1986, the Claimant was displaced by a more senior employee. On January 29, 1986, she was advised that she had fifteen (15) days to exercise her displacement rights under Rule 22 of the Agreement. In addition, she was told how to apply for the Extra Board under Rule 18(g). The Claimant applied to the Extra Board on January 31, 1986.

In the meantime, the Carrier's medical staff was reviewing the November 18, 1985, statement from the Claimant's personal physician. Around the end of January or beginning of February the Claimant was advised that in response to the advice from her personal physician, the Medical Services Department was restricting her from working the night shift. In effect, she was placed on medical leave of absence, since all Extra Board assignments required working all three shifts.

On February 11, 1986, the Claimant was advised to notify the Carrier if there was any change in her medical status. The Carrier did not hear from the Claimant by September 15, 1987, at which time they wrote to her requesting an update on her medical condition. The Claimant had a new physician who had been administering to her medical needs for four weeks. After receiving the Carrier's request, she forwarded to them a note from this physician. Among other things the letter indicated:

". . . She has brought to my attention that she's been off work due to rheumatoid arthritis. She has had weekly examinations in my office and seems to be in good health. All the joints are normal with no signs of inflammation or deformity. Her recent blood tests (copy enclosed) prove that she has no active inflammation."

The Carrier's Medical Director responded to the statement by requesting additional information regarding her rheumatoid arthritis. He indicated that the blood tests submitted by her physician were not pertinent to the rheumatoid arthritis. He added that a follow-up examination by the doctor who had attended her during her initial employment would be helpful, since that physician had originally made the diagnosis of rheumatoid arthritis and advised against her working the night shift. The Claimant herself responded to this request by attempting to impeach the diagnosis of her original doctor and revealing that she had no need to visit a physician because of this condition during her entire medical leave. She further stated she took responsibility for herself. She believed she was in good health and problems she had in the past were related to her sensitivity to smoke.

Despite being contacted on three successive occasions with a request to supply the above cited information, the Claimant provided no such information nor did any attending physician.

The Carrier notified the Claimant that she was to attend a formal Investigation to determine her responsibility, if any, in failing to provide the medical information relative to her condition and alleged recovery therefrom. The Investigation was held in May, 1988. Subsequently, she was examined by another physician who cleared her for return to work.

In October, 1988, five (5) months after she returned to work, she filed the Claim which is the subject matter of this dispute.

There are obvious procedural flaws in the presentation of this charge. While the Board believes the Carrier's argument regarding the timeliness of this claim may be valid, we believe it is in the best interest of the Parties to examine this case on its merits.

As this Board has held on numerous occasions, the Carrier has the right to protect itself and its employees by assuring that its active employees are physically able to perform their duties. In the instant case, the Claimant was a member of an Extra Board. One of the requirements of the Extra List is that the employees on such a list make themselves available for all shifts.

In November, 1985, the Claimant's personal physician advised the Carrier that it was "against his medical advice (sic) that she work night shifts." (emphasis added) After reviewing the information provided, and realizing the only work available required the Claimant to work all three shifts, the Carrier placed the Claimant on medical leave.

This was within the Carrier's rights and was based on the evidence submitted by the Claimant's personal physician. The Carrier had not taken this action arbitrarily. While the Claimant may have been willing to work all three shifts, as she had done for two and one-half months while the medical staff reviewed her doctor's request, the Carrier would have placed itself in an untenable position had they ignored her doctor's opinion and allowed her to continue this course.

Furthermore, despite being asked to keep the Carrier advised of her medical condition, the Claimant failed to communicate with the Carrier until they took the initiative and asked her for an update in September, 1987. Even though she subsequently provided a letter from a doctor who had been attending her for four weeks, the letter did not contain enough information on which the Carrier could justify returning her to work. They requested additional information on three different occasions, but only received a personal letter from the Claimant in which she criticized the physician who had diagnosed rheumatoid arthritis originally, claimed to be in good health and merely sensitive to smoke. It goes without saying that such a letter was not in compliance with the Carrier's request. The Claimant was not qualified in medicine.


It was only after a formal investigation that the Claimant submitted to an appropriate physical examination. The Claimant was given a medical clearance to return to work and did so shortly after the Carrier received this medical report.

In conclusion, the Board finds no basis to this claim. The Carrier acted properly in putting the Claimant on medical leave based on her physician's findings. During her medical leave, she did not communicate with the Carrier even though, according to her own statements, she had not experienced any symptoms of rheumatoid arthritis during her leave. It wasn't until they contacted her that she sent them any information. At that time she provided them with a statement from a doctor she had been seeing for only a short period. When the Carrier requested additional information, she did nothing until forced to do so through an investigation. The Claimant must accept responsibility for any delay in her return to work.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.