



FINDING:

On December 9, 1972, claimant Conductor K. B. Oakman suffered an off-duty hip and other injuries causing his hospitalization. While hospitalized, claimant suffered a myocardial infraction and a blood clot in left leg. On June 14, 1973, claimant returned to service, performing the same duties he had performed before he was injured after examination by Dr. C. J. Mock, Senior Medical Officer of the carrier. On June 25, 1973, O. Eggertson, the carrier's Regional Medical Officer, (senior to Dr. Mock in the carrier organization) wrote to J. A. Clark, carrier's General Supt. of Transportation at Winnipeg, with copies to J. D. Hadley, Carrier's Manager of Employee Relations at Winnipeg and H. C. Lear, Carrier's Manager at Virginia, Minnesota that he had reviewed claimant's medical record and that claimant's options as to work must be restricted. The letter did not state the reasons for the restriction other than review of the record and medical condition, and went on to suggest service as a passenger trainman on CTC territory, a baggageman on a train with a full crew, or a conductor on a quiet selected branch line. The letter was internal, and at the time was not known to the claimant or the organization.

Claimant continued working without incident for five months until November 14, 1973, when he was required to be again examined and declared unfit due to the carrier's medical policy. It is the carrier's position that its medical policy not to allow an operating employee, who has suffered a heart attack, to continue in train service. The organization denies that there is any such policy; alleges that other employees have remained in service after a heart attack; and that the policy, if it does exist, is unreasonable in view of

claimant's performance for the five months from June to November, 1973 and the finding by three separate doctors that claimant was fit to work.

There was oral argument in regard to a three doctor medical board. At the time, the contract did not provide for such a board. A three doctor panel was suggested at a meeting of carrier and organization representatives on March 5, 1974, but was not established. This board could establish such a doctor panel pursuant to the Gunther decision. However, as there are no medical facts to be determined in regard to the claimant, such a board is not necessary.

The carrier is concerned as to its prerogative to establish reasonable minimum physical qualifications for its employees, that they will not be a danger to themselves, their fellow employees or the public. This is not only the carrier's right, but also its duty, and this award in no way abridges that right. Such standards, once established, however, must be reasonable, uniformly applied and published so that both the carrier's examining physicians and its employees know what the standards are.

<sup>Board</sup>  
This does not know the railroad experience of Dr. Eggertson. His June 25, 1973 letter suggests certain restricted work which can be as onerous as claimant's usual work. It is apparent that the policy preventing employees in train service from working after a heart attack was not known generally to carrier's medical officers, if such a policy did exist on June 13, 1973, witness Dr. Mock's approval to return to work June 13, 1973, and Dr. Mock's finding of unfit due to policy November 14, 1973. While the reasonableness of the polciy need not be determined by the Board at this time, it would seem that a no-exception-in-any-case policy is unreasonable

in view of the present state of the medical art, and the reports of three doctors as to this claimant. Claimant will be restored to service, **SUBJECT TO THE USUAL PHYSICAL EXAMINATION FOR MEN OUT OF SEA**

There is also a claim for compensation for all time lost. This would be the period from November 14, 1973 to present. Here claimant was offered alternate employment by the carrier which was refused, and had applied to the carrier to obtain temporary work as a flagman commencing May 1, 1974, which work claimant subsequently declined. It is the settled position of the 1st Division National Railroad Adjustment Board that awards before the 1st Division are rendered without the common-law deduction for outside earnings. Should the alternate service declined by claimant, be considered within the usual rule on deduction of outside earnings, or outside the rule and service which claimant was obligated to accept to minimize his damages. This issue was not argued. However, the work offered by the carrier was not the work claimant would claim in accord with this seniority, and claimant was under no obligation to accept such work. There can be no deduction.

AWARD: CLAIM SUSTAINED AS PER FINDING

ORDER: This award is ordered effective forthwith. The carrier is ordered to pay the claim within sixty (60) days.

C. F. Christiansen  
C. F. Christiansen  
Organization Member

D. E. Prover (Dissent)  
D. E. Prover  
Carrier Member

Arthur W. Sempoliner  
Judge Arthur W. Sempoliner  
Chairman and Neutral

DATED: Detroit, Michigan  
Feb 20, 1975