

Parties to Dispute

Seaboard Coast Line Railroad Company

and

United Transportation Union

Statement of Claim

Request of Conductor-Trainman Leonard Roland Kent that he be allowed to return to work with all rights and pay for all time lost beginning on June 9, 1978, this being the date he advised the Company he was physically fit to return to work as shown in letter of July 12, 1978, from Dr. R.C. Rodgers, but was not allowed to return to work.

Findings

Claimant entered Carrier's service on May 7, 1963. He was promoted to Conductor on December 30, 1968. On January 28, 1976, Claimant sustained an injury to his neck and lower back while working as Flagman on a work train at Brewster, Florida. As a result of this injury, Claimant filed suit against the Carrier.

The complaint alleged permanent injuries to his back, neck, nervous system and other injuries not yet diagnosed. In his complaint, the Claimant alleged, among other things, that:

"These injuries are permanent and in the future, Plaintiff will suffer lost of wages, loss of earning capacity and medical expenses, personal inconvenience and mental and physical pain and suffering, plus the inability to lead a normal life."

The case was tried in September 1977. At the trial, Claimant's doctor, testified with respect to Claimant's injuries, in part as follows:

"Q. Dr. Aronson, do you have an opinion, based on reasonable medical probability, as to whether this young man can and should return to work for the Railroad as a railroad worker? I can give you, hypothetically, the occupation, the occupational duties and ask you to assume that work includes getting on and off moving equipment, throwing switches, uncoupling cars, climbing up and down ladders, applying hand brakes, handling heavy knuckles, things of that nature. Do you have an opinion as to whether this man can and should return to this type of work? (Emphasis Added)

A. Yes, sir.

Q. What is your opinion?

A. That he should not return to that kind of work. (Emphasis Added)

Q. Why?

A. I don't believe that he can do it with any degree of reasonable comfort. I think, because of the restrictions that he has in movement of his neck and the pain that he suffers, that it would be potentially hazardous to him, that he might get further injuries, so I believe that it would be unwise to try that kind of work. (Emphasis Added)

Q. Doctor, do you have an opinion, based on reasonable medical probability, as to whether or not these symptoms and these problems are permanent in nature? (Emphasis Added)

A. Yes.

Q. What is your opinion, Doctor?

A. That they are permanent. (Emphasis Added)

Q. Why do you give that opinion and what do you base it on, sir?

A. It's been such a long period of time since the accident occurred and his symptoms are remaining the same. (Emphasis Added)

Q. Doctor, medically, what is your opinion--what, in your opinion, should be the physical limitations, placed on Mr. Kent in terms of types of activities, things of that nature, sir, in view of your opinion concerning his injury?

A. Those things which don't give him pain, which are those that put a minimal stress on the muscles of the spine, light activities.

Q. All right, sir. Now, by 'permanent', sir, do you mean for the rest of this man's life?

A. Yes." (Emphasis Added)

The jury returned a verdict in favor of Claimant in the amount of \$183,000.

On June 5, 1978, Claimant reported to Carrier's office in Tampa and requested that he be returned to work. After some initial confusion with respect to Claimant's status, Carrier's Superintendent wrote Claimant on July 13, 1978, as follows:

"Following personal injuries sustained by you on January 28, 1976, while in service as a trainman, you brought suit against the Company--alleging that you were seriously and permanently injured and as a result you had suffered loss of earnings in the past, loss of earning capacity in the future, mental and physical pain and suffering, and inability to lead a normal life. In the ensuing trial of your case before a jury, the medical evidence and other testimony presented by you proved to the satisfaction of the jury that you could never return to your railroad duties. As a result of the pleadings and evidence presented at the trial, you were awarded a jury verdict in the amount of \$183,000, which took into consideration your pain and suffering, past lost wages and loss of future earnings capacity based on evidence you presented that you could never return to your railroad work. Judgment was entered on the verdict and this Company satisfied that judgment on November 7, 1977.

Based on these facts, you are estopped from returning to your former duties as a conductor-trainman, and your name will no longer be carried on the conductors' nor in the trainmen's seniority rosters."

The Organization takes the position that Claimant was unjustly deprived of his seniority and means of livelihood without just cause in violation of Article 31(a) - Investigation and Discipline Rule. It contends that Claimant's injury and subsequent Award from the court in connection with such injury had no relation to his contractual rights to seniority and the performance of service in exercise of those rights. In effect, the Organization contends that Claimant was dismissed from Service without a fair and impartial investigation in accordance with Article 31(a).

The Board is satisfied, after extensive review of court cases and awards on this subject, that the better reasoned and majority view is that a continuation of an employment relationship is inconsistent with the recovery of damages from Carrier for total and permanent loss of one's ability to work. Such recovery of damages is deemed, therefore, to constitute a termination of such employment relationship. Since Carrier has therefore paid Claimant for any future loss of time, he is now estopped from asserting any rights to seniority or to return to active service.

In Jones vs. Central of Georgia Railway Co. (U.S.D.C., Northern District of Georgia, August 9, 1963), the court said:

"It seems to this Court the applicable rule of law is firmly established that one who recovers a verdict based on future earnings, the claim to which arises because of permanent injuries, estops himself thereafter from claiming the right to re-employment, claiming that he is now physically able to return to work."

After citing numerous railroad cases, the Court continued:

"In this case permanent injury was alleged in his position in the Superior Court. The petitioner had presented proof of it. The jury returned a substantial verdict for him. The juries award in this toward action, it seems to this court, was obviously intended to compensate the petitioner for permanent or protracted loss of opportunity as a Switchman. Having once recovered for this loss, it is unconscionable for him to attempt to do so again."

In First Division Award No. 4355, the Board stated in pertinent part:

"If the Claimant has, in fact, been compensated by this Carrier for total and permanent disability, that fact that he may have been unjustly discharged is immaterial. To allow the Claimant to recover double his damages would amount to his unjust enrichment and inflict an undue hardship on the Carrier.

We are not unmindful that precedents may be found that would appear to lend support to the Claimant's contentions. We believe, however, that a careful consideration of these precedents will lead to the conclusion that they are distinguishable on the situations or that they are contrary to the weight of the better reasoned authority.

It is our conclusion that the Claimant having chosen his forum, won his case and accepted the benefits thereof, is now estopped from pursuing the pending case before this Board."

For the foregoing reasons, this Board is satisfied that the Claim must be denied.

AWARD

Claim denied.

M. Kumar
Neutral Member

D.C. Sheldon
Carrier Member

M.H. Sabini
Organization Member
(Dissenting)

Date: May 13, 1981