

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13843
Docket No. 13704
05-2-03-2-52

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Robert Manley, Jr.

PARTIES TO DISPUTE: (

(Northeast Illinois Regional Commuter Railroad
(Corporation

STATEMENT OF CLAIM:

"On September 16, 2002, my shift was abolished a KYD yard. I bumped to a job at 49th St. My job was reinstated at 18th St. I bid the 18th St. forklift/laborer job (see page 1). This was the same job that I held at KYD yard for 7 years. The job I bid on was a lone position job. (see page 10). Metra denied me the job because of my permanent restrictions.

I was injured on May 2, 1997 at KYD yard. I came back to work with permanent restrictions (see page 2). In my settlement with Metra, I have an agreement between my lawyer, Metra, and myself that when I apply for another position at Metra my permanent restrictions will follow me (see page 3). The only reason I settled with Metra was to have my job and to have my permanent restrictions go with me when I apply for a job. According to this agreement, I cannot be denied for a job because of my permanent restrictions. Judy Tancula, Metra's claim agent, was also present when the settlement was made. She stated that Metra would work around my permanent restrictions. My dad was present when the settlement was made and is a witness to what was said.

In my grievance that was filed, Metra violated Rules 17, 19, 22, 24, and 46 (see pages 7, 8, 9). Metra has taken away all my bidding rights by denying me this position."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

According to the Organization in its January 14, 2003 letter, the Claimant has on-going medical restrictions which include no squatting, keeling, ladders, climbing, walking, buffing, stripping, scrubbing, waxing, or pit work. Further, according to the Organization, the Claimant is on permanent light duty and must ice his knees as needed.

The second shift at the Carrier's KYD Shop was abolished affecting numerous employees. By bulletin dated September 9, 2002 and effective September 16, 2002, the Claimant's regular assigned Laborer's position at the KYD Shop was abolished. As a result, the Claimant bumped into a Laborer's position at the 49th Street Shop.

On September 11, 2002, the Carrier posted a Laborer/Fork Lift position at the 18th Street MU Shop. This was a lone position on the second shift. The Claimant bid on that position, but the Carrier awarded the position to a junior employee. This claim followed.

The record shows that the Claimant was not awarded the new second shift position at 18th Street because it was a lone position and the Carrier was of the opinion that it could not reasonably accommodate the Claimant's medical restrictions due to the fact that there were no other employees working on that shift

to pick up duties that the Claimant would not be able to perform as a result of his medical restrictions. The Carrier points out that there are certain functions including sweeping and steaming which must be performed on the second shift. Additionally, according to the Carrier, snow blowing and salt spreading could not be put off if that work was needed on the second shift. Further, according to the Carrier, given the Claimant's restrictions on climbing, he could not clean the locker rooms upstairs in the lunch room area which is work that needed to be done when employees were not present.

The Carrier has the managerial right to determine whether employees are qualified to perform jobs. This Board does not second guess those managerial decisions unless the record shows that the decisions were without a rational basis, justification or excuse and therefore arbitrary. The evidence in this record shows that the Claimant has medical restrictions and he bid on a job that was a lone position which required that he perform certain duties that were outside of his medical restrictions. Essentially, the Carrier determined that because no other employees would be present on the Claimant's shift to pick up the duties the Claimant might not be able to perform, the Claimant was not qualified to perform the new job at 18th Street. The Carrier's decision that the Claimant was not qualified to perform the duties of that job in the lone position had a rational basis and therefore was not arbitrary. The Carrier's decision not to defer duties to another shift also cannot be found to be arbitrary.

The Claimant's reliance on a settlement which states that his medical restrictions will "follow" him if he applies for other positions does not change the result. That settlement can only be read for what it states - i.e., that the Claimant's medical restrictions will follow him as he moves from job to job. That settlement does not guarantee the Claimant that he will be awarded positions that are outside his restrictions in situations where the Carrier cannot reasonably accommodate his restrictions. The lone position in this case had job duties which were outside of the Claimant's medical restrictions and could not be reasonably accommodated by the Carrier. To accommodate the Claimant's medical restrictions in this case would have required the Carrier to assign (and pay) an additional employee to work alongside the Claimant in what was a lone position. The settlement cannot be read to require the Carrier to do that.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 3rd day of May 2005.