Award No. 12989
Docket No. MS-14285

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

GEORGIANNA (SMALL) VAN HOUTEN

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Pere Marquette District)

STATEMENT OF CLAIM: Now comes the above Petitioner by her attorneys Marcus, McCroskey, Finucan, Libner & Reamon and states the following as Notice of her intention to file an ex parte submission of grievance under the appropriate provisions of the Railway Labor Act, 45 U.S.C.A., Sec. 153:

1.

Petitioner has been employed by the Carrier as a dining car hostess since approximately February 27, 1947. Since March 20, 1961, she has been disqualified for service on the stated ground that she is emotionally unsuited for continued employment.

2.

Subsequent to her disqualification for future service, Petitioner has been examined by several physicians and there is a marked difference of opinion regarding her state of psychiatric health. However, assuming the validity of the decisions made by examining physicians selected by the Carrier, as well as a neutral examiner, Petitioner contends that she is fully qualified for immediate resumption of full employment duties.

3.

Petitioner has exhausted all remedies available to her under the provisions of the schedule agreement between the Carrier and Petitioner's collective bargaining representative, Dining Car Employees Union, Local 351.

4.

Petitioner's grievance not having been resolved in the course of negotiation of the Carrier, it is her intention to file an ex parte submission with this Board within thirty (30) days from this date, as provided by National Railroad Adjustment Board Circular No. 1, issued October 10, 1934.

5.

Petitioner hereby requests that an oral hearing be held with respect to this submission.

OPINION OF BOARD: The Claimant was formerly employed by the Carrier as a dining car hostess. The record shows that she retains seniority in that capacity, but she has been withheld from active service since March 20, 1961, on the ground that she was not qualified for service. In her submission to this Board the Claimant contends that she is fully qualified for immediate resumption of full employment duties. The Carrier contends that she is not so qualified.

The Carrier is entitled to establish and maintain reasonable standards of fitness for employment. Rule 21 of the applicable Agreement recognizes that employes covered thereby are required to undergo physical re-examinations in accordance with the rules prescribed by the Company and public health regulations. Following periodic physical examination of Claimant on March 15, 1961, and review of the case by the Carrier's chief medical officer, it was determined that Claimant was not qualified for service and she was so advised. In subsequent handling on the property an understanding was reached between the Carrier, the Claimant and her representative, providing in part:

> "The Carrier is agreeable to having its Chief Medical Examiner and such doctor as the Employe may select, agree upon the neutral doctor, the doctor representing the Employe and the Carrier's Chief Medical Examiner each furnishing to the neutral so selected, findings or other data already available, in order to enable the neutral so chosen to make his findings to both doctors jointly, in writing, as to whether Mrs. Small has the condition upon which her disqualification has been based, the Carrier and the Employe each to pay fifty (50) percent of the expense of securing the neutral doctor and having him make necessary examinations, tests, etc. to enable him to make a finding on the question submitted to him."

The examination contemplated in the above understanding was arranged for, and submitted to by the Claimant, and the report of the examining doctor was furnished to the parties and has been made a part of the record before the Division. This report shows conclusively that the Claimant had the defect which was the basis upon which she was disqualified by the Carrier's Chief Medical Examiner.

Based upon the entire record, the Board finds no basis for disturbing the action of the Carrier in its determination that Claimant was not qualified for service. Having reached this conclusion, it is not necessary to pass upon other contentions raised by the parties.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1964.