

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John B. Criswell, Referee

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC  
ERIE-LACKAWANNA RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Erie-Lackawanna Railroad, that:

1. Carrier violated the Agreement between the parties when on September 7, 1968, it arbitrarily removed Agent-Operator J. F. Menchin from the service on the basis of allegedly being physically disqualified. This without the benefit of a physical examination.

2. Claimant shall be reinstated with all seniority and other rights unimpaired, returned to his assigned position, Agent-Operator, South Orange, New Jersey, and compensated for all wage loss suffered and expenses incurred.

**EMPLOYEES' STATEMENT OF FACTS:**

**(a) STATEMENT OF THE CASE**

An Agreement between the parties, revised and reprinted July 1, 1953, as amended and supplemented, is available to your Board and by this reference is being made a part hereof.

This claim was timely filed, progressed under the provisions of the Agreement to the highest officer designated by the Carrier to receive appeals, including conference, and has been denied. The Employees, therefore, appeal to your Honorable Board for adjudication.

This claim grew out of Carrier's action on September 6, 1968, disqualifying Ticket Agent-Operator J. F. Menchin for physical reasons. Carrier's decision, rendered by Chief Surgeon W. E. Mishler on the basis of a regular six months physical examination by Carrier's local doctor that had been made almost four months prior on May 20, 1968. Carrier's local doctor had approved Mr. Menchin for continuing service subject to reexamination in six months, or on November 20, 1968. The subject to a restriction under which Claimant had been working for well over 35 years.

**(b) ISSUES**

Physical disqualification without reason and refusal of Carrier to require its Chief Surgeon to reexamine Claimant.

D). Claim was thereafter handled in the usual manner, including conference and is now before this Board for adjudication. Copies of pertinent correspondence attached as Carrier Exhibits E, F, G and H.

(Exhibits not reproduced.)

**OPINION OF BOARD:** It is the claim of the Organization that the Carrier violated its Agreement when, on September 7, 1968, Agent-Operator Menchin was disqualified for medical reasons and removed from service.

From reading of the correspondence exchanged during handling of this dispute on the property we find both sides intended to handle the matter under Letter No. 1, a letter Agreement signed by both parties covering the disqualification of employes for medical reasons and setting up certain procedures. We find that this is the controlling Agreement.

We quote from the third paragraph of Letter No. 1:

"Upon request of the employe the Chief Surgeon will submit a report of the medical findings to the employe's family physician. If after consultation with his family physician the employe so desires, the Chief Surgeon will furnish him a report covering his examination in layman's language. If any employe is dissatisfied with the action taken by the Chief Surgeon as a result of this physical examination, the General Chairman may progress the matter with the Chief Surgeon and upon presentation of written authorization by the employe the Chief Surgeon will make available and explain to the General Chairman the medical findings in the case. If still dissatisfied, the General Chairman may arrange with the Chief Surgeon for further handling of the case between the Chief Surgeon and the employe's family physician. If thereafter it is desired to further progress the case, the Chief Surgeon and the family physician of the employe will arrange for a neutral physician (qualified as an expert in the field of medicine concerned and qualified by the American Board or equally rated society), who will reexamine the employe. . . ." (Emphasis ours.)

It is a thorough, clear procedure which involves, on appeal, the General Chairman petitioning the Chief Surgeon directly.

In Award 16926 (McGovern) the same Chief Surgeon indicated an arbitrary attitude and in advance of these outlined steps, said he would not be bound by them. In Award 16947, as in the case at hand, the General Chairman never attempted the route outlined in Letter No. 1—thus, we cannot know if the Chief Surgeon would follow the Agreement.

We are unable to determine whether the act of the Chief Surgeon was arbitrary and abusive, or whether it was a forced retirement, since we have found that an Agreement is in force and the handling of the claim did not conform with its demands.

We will deny the claim.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds: