

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

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 violates the parties' Agreement by suspending Miss Barbara Jean Mackert from filling her regular position, 2nd trick, "HM" Teletype Office, Hammond, Indiana.

2. Carrier shall, because of violation in (1) above, commencing sixty days prior to the filing of this claim, in accordance with the provisions of Rule 26 (2), be required to compensate Miss Mackert for all wages lost, including all overtime earned by the relief or replacement, until she is reinstated to her regular position at "HM" Office. This shall be paid to her in addition to any outside earnings she may have.

3. Further, Carrier shall be required to pay Miss Mackert seven (7) per cent on all wages withheld as a result of its arbitrary and improper action.

4. Further, Carrier shall be required to compensate her in an amount equal to any losses, other than wages and expenses, she may have incurred.

OPINION OF BOARD: Claimant applied for a position in 1966 with Carrier and was disqualified by the Chief Surgeon due to obesity: 190 lbs., height 5' 3½". She was soon qualified on special appeal because of shortage of operators.

In 1968, Claimant was examined by local company doctor with the results forwarded to the Chief Surgeon who disqualified her June 16 for all service. Her weight was 250, blood pressure 170/110, hypertensive and had glycosuria.

After delays, Claimant was re-examined October 16, and it was found her blood pressure to be 154/90, blood sugar reduced and was found able to do her job as operator.

It is the claim of the Organization that Claimant, under provisions of the July 24, 1948, Letter No. 1 covering medical matters, must have been examined personally by the Chief Surgeon before being disqualified.

The language of that Letter No. 1 pertinent to this case says:

" . . . 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."

This Board has held many times that the Carrier has the right to determine the physical fitness of its employes. Lay members are not qualified to substitute their judgment for that of the Chief Surgeon. Before us is the question of whether the procedure of the Chief Surgeon conformed to the requirements of the Memorandum Letter, or whether he was arbitrary and unjustly removed claimant from service.

We find this paragraph of Letter No. 1 allows the Chief Surgeon certain latitudes which he may have exercised in more than one instance to the border of intolerable arbitrary acts. The sentences in question are sufficiently vague as to allow the Chief Surgeon the option of personal examination, or personal examination of the records forwarded to him by a duly authorized Carrier physician. He is required to furnish a report, if requested, of the examination in layman's language. But we find it may be a report of the finding of an examination performed either by himself or his designee.

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

That the parties waived oral hearing;

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 23rd day of October 1970.

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