

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19906
Docket Number MS-20150

Irving T. Bergman, Referee

(Harry E. J. Marsh, Sr.

PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of
The National Railroad Adjustment Board, of my intention to file an **ex** part submission on December 16, 1972 covering an unjusted dispute between me and the Soo Line Railroad Company involving the question:

Did the Soo Line Railroad Company unjustly terminate the service of Mr. Harry E. J. Marsh, Sr. at 4:45 P.M., February 18, 1972 on the pretext of physical, and when this was disproved, mental disqualification?

OPINION OF BOARD: The facts show that the claimant was 78 years of age when he was removed from service. He had been subject to a physical examination annually after reaching age 65. At the last examination, the carrier's Medical Director disqualified claimant for service. After claimant submitted his own doctor's statement, the carrier requested further medical tests and would have involved a neutral doctor if necessary. However, claimant failed to present himself to the carrier's doctor to complete the tests.

The petition as set forth is predicated upon the proposition that the carrier, "unjustly terminated," the claimant, The record demonstrates that the carrier did not terminate the claimant from employment. As a physically disqualified **employee**, claimant has been carried as, "on leave of absence with seniority rights unimpaired." Carrier's Exhibits A & B, bear this out and are not contradicted.

The carrier's reliance upon the recommendation of its Medical Director is justified. Although we do not pass upon the medical evidence, the recommendation is based upon examinations and does not appear to be arbitrary.

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 Employees involved in **this** dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934:

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

By reason of the petitioner's status as explained above,
the claim as framed is denied.

A W A R D

Claim Denied.

NATIONAL. RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19906
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The **petition** as set forth is predicated upon the proposition that the carrier, "unjustly terminated," the claimant. The record demonstrates that the carrier did not terminate the claimant from employment. As a physically disqualified **employee**, claimant has been carried as, "on leave of absence with seniority rights unimpaired." Carrier's Exhibits A & B, bear this out and are not contradicted.

The carrier's reliance upon the **recommendation** of its Medical Director is justified. Although we do not pass upon the medical evidence, the **recommendation** is based upon examinations and does not appear to **be** arbitrary.

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 **Employees** involved in **this** dispute **are** **respectively** Carrier and **Employees** within the meaning of the **Railway Labor Act**, as approved June 21, 1934:

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the dispute involved herein: and

By reason of the petitioner's status as explained above,
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AWARD

Claim Denied.

NATIONAL RAILROAD ADJUSTMENT **BOARD**
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.