

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20547
Docket Number CL-20585

Robert A. Franden, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station **Employees**

PARTIES TO DISPUTE: (

(J. F. Nash and R. C. Haldeman, Trustees of the
(Property of Lehigh Valley **Railroad** Company, Debtor

STATEMENT OF CLAM: Claim of the System Committee of the Brotherhood
(GL-7466) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1955, particularly Rule 68, when Miss Sophie Weiss, Telephone Switchboard Operator, System General Offices Seniority District, Bethlehem, Pa. was removed from service on completion of tour of duty **Monday, August 21, 1972**, pending results of physical examination following which she was not permitted to return to work.

(b) Miss Sophie Weiss be restored to **service** with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum, compounded daily. (Case 56/72)

OPINION OF BOARD: At the completion of her tour of duty on August 21, 1972, claimant was held out of service pending the results of a physical examination to be given her by the Carrier's Chief Surgeon the following afternoon. On August 29, 1972, claimant was advised that based upon the Chief Surgeon's findings she would not be returned to work.

The Organization alleges that the procedure followed by the Carrier was in violation of **Rule 68** of the Agreement. They further allege that the substance of the Chief Surgeon's findings does not warrant removal of **claimant** from service given the conditions of her employment. Rule 68 reads as follows:

"Rule 68 - Physical Examinations

It is recognized that **employees** coming within the scope of this agreement may be required to undergo physical examination by Company Surgeon upon orders to do so by the Company to determine their physical fitness to safely perform the duties of a position coming under this agreement. Physical examination shall be conducted with as

"Little inconvenience as possible to the employe and when possible, without loss of time. The Company Surgeon's fee for physical examinations will be paid by the Company. An employe failing to qualify on examination before Company Surgeon ~~my~~, upon request, be re-examined by the Chief Surgeon. In the case of such examination, employe must make himself available at the appointed time and place without expense to the Company. if upon examination, an employe is found physically unfit by the Chief Surgeon to continue in the service, he may appeal such decision through the General Chairman, supported by medical evidence from a doctor of his own choice. If, after review of his case by the Company he is still determined to be physically unfit to resume work, upon further appeal and additional supporting evidence by such employe, Management and General Chairman shall confer as to the further handling of such case."

The Carrier has responded to the effect that there is nothing in the Agreement that prohibits it from holding an employe out of service during the **pendency** of a physical examination. Carrier further states that the findings of disability in this case were in accord with the AAR Medical standards for "operators - telephone switchboard."

We cannot agree that the Carrier was fully within its rights in the manner it handled this case. The claimant held her position under a contractual right. The Carrier may not arbitrarily suspend that right as it did ~~in~~ this case. That authority is not implicit under Rule 68. Once an employe holds his position by exercising his rights and seniority under the collective bargaining agreement he is protected from an arbitrary suspension or removal therefrom. Rule 68 specifically states that the physical examination is to be given "with as little inconvenience as possible to the employe and, when possible, without loss of time." The actions of the Carrier were not within the letter or spirit of that provision.

The claimant, however, has not overcome the burden of showing that the findings of the Carrier's medical authorities to the effect that claimant did not meet the minimum medical standards for her position were arbitrary, capricious or tendered in bad faith. The Carrier has the prerogative of setting reasonable medical standards and insuring that its **employees** qualify thereunder.

We hold that the Carrier violated the Agreement by holding Claimant out of service in the manner outlined above and that Claimant should be compensated for wage loss, if any, sustained during the period from August 21, 1972 to August 29, 1972, without interest.

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;

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

That the Agreement was violated.

A W A R D

Claim sustained in accordance with this Opinion.

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

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.