NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20845
Docket Number SG-20618

Francis X. Quinn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road Company:

Appeal discipline imposed on Mr. R. A. Melucci as a result of two trials, May 2, 1973, following two notices of April 23, 1973.

OPINION OF BOARD: The Carrier has the right to determine whether or not its employees are physically capable of performing their duties and to remove them from service when they are not so capable.

In the instant case, The Rule 67 provides for a Board of Doctor8 to be set up if a dispute arises concerning determination of physical fitness. The Claimant failed to avail himself of that remedy. Therefore, we will deny the claim.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Panbo
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1975.

Dissent to Award No. 20845, Docket No. 'S-20618

The Majority in Award No. 20845 has erred.

The Claimant in the dispute disposed of was injured in the Respondent Carrier's service. He had been under treatment by his personal physicial and his progress was periodically monitored by the Respondent's physician. Upon a finding by its physician that he was able to return to its service, the Carrier ordered the Claimant's immediate return. The urgency with which it pressed for that return made it obvious that its only concern was to attempt to limit its liability under the Federal Employers' Liability Act.

The Claimant advised that he would have to consult his attorney before he returned to work, end when, because of that need, he did not report for work at the moment designated by the Carrier, the Carrier assessed the subject discipline.

The Majority has denied the Petitioner's claim on behalf of Claimant holding that he should have availed himself of a Board of Doctors provided for in Agreement Rule 67. That Rule does indeed provide for a Board of Doctors, but that Board is for the purpose of making medical determinations? not for giving advice concerning Claimants legal rights, status, etc. Claimant raised no dispute regarding his physical condition and there was thus no question for a medical Board to decide.

The Majority, apparently unable to deny the only question which was before it, invented one which it could deny and substituted it. A more contemptible move cannot be imagined.

Award NO. 20845 is in error and I dissent.

W. W. Altus, Jr.
Labor Member