

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number **21896**  
Docket Number CL-21668

James **F. Searce**, Referee

**PARTIES TO DISPUTE:** (  
(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station **Employes**  
(  
(Missouri Pacific Railroad Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood,  
GL-8120, that:

1. Carrier violated the Clerks' Rules Agreement hearing the effective date of March 1, 1973, when Carrier arbitrarily and capriciously refused to assign Gary L. Gunnels to position of Caboose **Supplyman** No. 111 (Carrier's file 280-812)

2. Carrier shall now be required to compensate Mr. Gunnels for the amount of \$37.63 per day, beginning September 13, 1974 and continuing each day thereafter, in addition to any other compensation earned or received, until the violation is corrected by assigning Mr. Gunnels to the aforementioned position.

**OPINION OF BOARD:** This case disputes Carrier's refusal to assign Claimant to the position of Caboose **Supplyman** on the basis of a determination made by the office of Carrier's Chief Medical Officer that Claimant was not physically qualified to perform the duties of the assignment.

The record here shows that prior to the date of Claimant's employment, he had undergone surgery in 1967 for the **removal** of a cartilage from his right knee. In light of Claimant's medical history, the Assistant Chief Medical Officer, in approving Claimant's application for employment, wrote:

"Mr. Gunnels has had cartilage removed from his **knee** which is disqualifying by our standards. We are, however, at your request, waiving this disqualification and accepting Mr. **Gunnels** for employment in a strictly clerical capacity only,"

Based on our previous decisions, which have recognized the right of the Carriers' Chief Medical Officers to set and maintain reasonable and necessary medical standards, we find that in this case Carrier acted within its right when it refused to assign Claimant to the **position** of Caboose **Supplyman**.

**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** not violated.

A W A R D

Claim dismissed.

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

ATTEST:

*A.W. Paulus*  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1978.

