

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21991
Docket Number MS-21535

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (J. D. Eller
(Seacoast Transportation Company

STATEMENT OF CLAIM: Claim of J. D. Eller:

1. Carrier violated the Agreement when on October 17, 1974, it denied Truck Operator J. D. Eller the right to **displace** a **junior employee** at Tampa, Florida.

2. As a consequence thereof, Carrier shall:

- A. Reinstate J. D. Eller with seniority **and** all rights unimpaired.
- B. Compensate J. D. Eller for all wages **and** other losses sustained as a result of Carrier's violative act.

OPINION OF BOARD: Claimant was employed as a Truck Operator by the Seacoast Transportation Company on January 23, 1959. The Seacoast Transportation Company is a wholly-owned **subsidiary** of the Seaboard Coast Line Railroad Company. As a **result of** eye surgery in May, 1968, Claimant's **vision went** to 20/400 in his right eye. Claimant was therefore medically restricted by the Company's Chief **Medical** Officer from driving any vehicle **on** Company business. He was allowed to return to service as a Helper, however. Claimant worked as a Helper until **the** Helper's Board was reduced, effective October 10, 1974. On October 15, 1974, **Claimant attempted** to exercise his seniority **on** a Truck Operator's position at Tampa, Florida. The Company denied his **request** due to his medical disqualification. Claimant asserts **that** he **was** arbitrarily denied his seniority rights when he was not **allowed** to displace a junior **employee**.

Initially, the Company contends that they are not a carrier within the meaning of Section 1, First of the Railway Labor Act, as amended, and that this Board therefore lacks jurisdiction over the current dispute. This Board fails to find the **Company's argument** persuasive. Insofar **as** we **can** discern, the Seacoast Transportation Company **is** indeed a carrier as contemplated by **the** Railway Labor Act. Accordingly, we have jurisdiction over the dispute submitted by the **Claimant**. (See Award No. 21990).

It is the considered **opinion** of this Board **that when** the Company disqualified Claimant from service as a Truck **Operator**, its decision **was** not arbitrary, capricious or unreasonable. It has been consistently held by this Division that management has the right to **determine** the physical fitness of its employees. In the claim before us, the Company's Chief Medical Officer disqualified Claimant from driving **any** vehicle **on** Company business after his **vision** went to **20/400** following eye surgery. In reaching his decision, we hold the Chief **Medical** Officer did **not** act arbitrarily, capriciously or **unreasonably**. Accordingly, the medical disqualification of the Claimant will not be disturbed by this Board.

The Claimant alleges that two other employees had eye problems similar to **his**, yet the Company did **not** disqualify them. **However**, the Company denies that the physical condition of **the two** employees **in** question was similar to the **Claimant's**. There is simply **no** probative evidence in the record to **support** the **Claimant's** assertion. Accordingly, this **Board** is unable to find that Claimant **was discriminated** against as he **suggests**.

The evidence fails to support the **Claimant's** position herein, and his claim **must** be denied as a result.

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.

Award Number 21991
Docket Number **MS-21535**

Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.