

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22415
Docket Number SG-22337

Louis Yagoda, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation
((Former Erie Lackawanna Railway Company) .

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the former Erie Lackawanna
Railway Company:

System Docket EL-4
Atlantic Region - Hoboken Division Case 121

On behalf of Mr. Paul Burke, Leading Maintainer, for all
time lost from March 10 through July 9, 1976, while out of service on
the basis of his physical condition."

/General Chairman file: #548 - P. Burke - #166241, Atlantic Region/

OPINION OF BOARD: As result of periodic medical examination by
Carrier's Medical Examiner, Claimant was notified
under date of March 5, 1976, that, because his condition had been
found to be "exogeneously obese," he would be qualified for work
for 6 months on condition that he be restricted from climbing poles.
However, on Carrier's finding that there were no positions available
which did not require Claimant to climb poles, he was advised by
Carrier on March 9, 1976, that he would not be permitted to resume
duty.

The Petitioner has progressed this claim contending that
the Carrier is in violation of Agreement Appendix "C" - Understanding
on Physical Reexaminations. Appendix "C" provides that the General
Chairman may progress the matter with the Chief Surgeon and only
"upon presentation of written authorization by the employe" the
Chief Surgeon will make the medical findings in the case available
to the General Chairman. The Claimant's authorization in this case
is dated May 6, 1976. After brief interim handling, Claimant was
returned to service in mid-July 1976.

Inasmuch as Claimant was returned to service, the question of the selection of a neutral physician **became** academic thereafter. To **show** the Carrier to have been at fault between **May 6** and **the** return of Claimant to service, it would be necessary to show that the Carrier unreasonably delayed in entering into the selection of the neutral and **thereby could** reasonably **be** said to have delayed the Claimant's earlier return. This record does not lend itself to such showing.

Accordingly, we find that the Carrier **has** not been **shown to have violated** Appendix "C". In light of our findings in the merits of this dispute, we find it unnecessary to resolve the procedural issue raised by Carrier.

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;

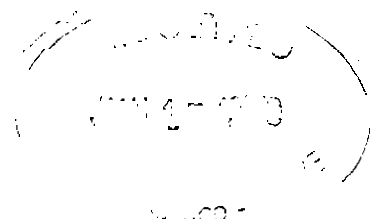
That **the** Carrier and the **Employees** involved **in** this dispute are respectively Carrier and **Employees within** the meaning of the **Railway Labor Act, as** approved June 21, 1934;

That this **Division** of the **Adjustment** Board has jurisdiction over the dispute invoked 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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1979.