

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22463
Docket Number CL-22178

Robert A. Franden, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood
(GL-8464) that:

1. Carrier violated and continues to violate the terms of the prevailing agreement between the parties when it refused to permit clerk, J. H. Threadgill, to return to work as requested in her letter of July 30, 1976.

2. Carrier shall now be required to allow Clerk Threadgill to return to the service of the Carrier in accordance with her request.

3. Carrier shall now be required to allow clerical employee, J. H. Threadgill, an additional day's pay beginning October 15, 1976, at the rate of a position to which her seniority would entitle her and continuing until such time as she is allowed to exercise seniority under the existing rules of the clerical agreement.

OPINION OF BOARD:

This dispute was submitted to the Board on August 15, 1977.

On May 12, 1978, the Board issued Award Number 22050 reading, in part, as follows:

'We find that there is need for additional medical data to determine the physical fitness of Claimant to return to work. Therefore, we direct that Carrier and Claimant or her representative select a neutral third doctor for the purpose of examining the Claimant and that the Carrier's physician, the Claimant's physician and the neutral doctor present a written report to this division of the Board within 60 days of the date of this Award, stating their conclusions regarding the physical qualifications of the Claimant to return to service on August 10, 1976 and at present.'

The parties could not agree on the panel of doctors contemplated by the Award and proceeded to request an interpretation thereof, which this Board issued on February 22, 1979 as Interpretation No. 1 to Third Division Award No. 22050, Serial Number 298, wherein the parties were directed to each select a physician of their choice and empower their respective physician to agree on a neutral physician.

On June 15, 1979, the report of the Neutral Physician was received by the Board which report reads, in part pertinent hereto, as follows:

"In my opinion she is NOT able to perform all the duties of her occupation . . ."

There is nothing in the record or the report upon which this Board could say that Claimant was, at the time the claim originated, medically qualified to perform the duties of her occupation and, as of the date of the Neutral Physician's report, he found that she was NOT able to perform all the duties of her occupation. Nothing of record precludes the possibility of Claimant recovering or being able to perform satisfactorily in some other occupation, however, the claim as submitted, based on the evidence of record, does not show that Carrier violated the Agreement and the claim must be, and is, denied.

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.

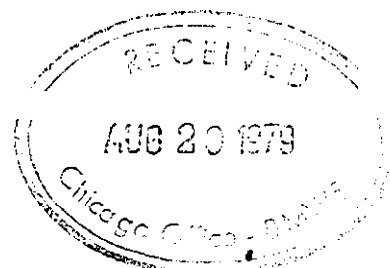
A W A R D

Claim denied.

ATTEST:

A. W. Paulsen
Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division



Dated at Chicago, Illinois, this 31st day of July 1979.