

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22566
~~Recheck Number 12-3229~~

an ex-parte submission on (30 days from date of this notice), 1-14-78, covering an unadjusted dispute between myself and the Belt Railroad Company , involving the question: of my suspension on Oct 4, 1976.

The Brotherhood of Railway, Airline and Steamship clerks, Freight Handlers, Express and Station Employees Case and Claim #, is or was Q-3229.

The Belt Railway Company's files in prior correspondence in Nov. 76 was 11-676 and in Dec. the Brotherhood answered and referred to File: 12-376."

OPINION OF BOARD: Following a series of events and psychiatric evaluations on September 9 and 21, 1976, and a diagnosis that Claimant was suffering from severe emotional disturbance, Carrier met with Claimant on October 4, 1976 and discussed his physical condition. During this conference, Carrier presented this medical evidence to Claimant and advised him that because of this condition, coupled with the fact that he had refused recommended further treatment for it, Claimant would be disqualified from service until he presented medical evidence that he had pursued treatment and until his physician considered him controlled sufficiently to enable him to return to service. Claimant's disqualification is the subject of this grievance.

Our review of the record and Claimant's presentation of the case reveals that while he has pursued his cause before the U. S. District Court and other governmental agencies, he has failed to produce any medical evidence, whatsoever, which conclusively shows that his condition has been controlled sufficiently to enable him to return to service. We also take judicial notice of the uncontroverted fact that the U. S. Railroad Retirement Board had granted Claimant a final disability annuity effective November 1, 1976. It is, of course, quite clear, that in order to be granted such an annuity, competent medical evidence must be presented and accepted by the Railroad Retirement Board which establishes that an individual is physically and/or

mentally disabled from performing the functions of assignments available to him in the exercise of seniority. Since such a fact is established by the record, and since there is no other medical evidence submitted **in** the record which would establish otherwise, we have **no** alternative but than to deny the claims brought before us by the Claimant.

FINDINGS: **The Third Division of the** Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Rmployes involved in this dispute are respectively Carrier and Rmployes 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

Claims denied.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of October **1979.**