

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24317
Docket Number CL-2397

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(
(Chesapeake and Ohio Railway company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-9379)
that:

(a) The Carrier violated the terms of the General Clerical **Agreement** when it held Mr. **Lester S. Winn** from service beginning May 9, 1977, and did not schedule an **investigation until** August 2, 1977, in violation of Rule 27 and also, after belatedly holding such investigation **found** him medically disqualified for service without any evidence to substantiate such findings and,

(b) The **Carrier** shall now restore **Mr. Lester S. Winn** to service with seniority and other rights **unimpaired** and compensate him for all losses **sustained** as a result of its wrongful actions.

OPINION OF BOARD: On March 22, 1977, the Claimant marked off his **assignment** because he was sick and did not return to **work** until May 9, 1977. The Carrier was advised by Doctor I. Kaplan by a letter dated July 14, 1977, that the Claimant was medically disqualified. Although, medical disqualifications are not normally handled in the railroad industry under the discipline rule, the Parties **in** this case have a practice of doing so. An **investigation** was held August 19, 1977. Based on the evidence, the Carrier disqualified the **Claimant**. The **Claimant was** reexamined on November 2, 1979, and **was** reinstated on November 28, 1970; thus, the Claim **is** for time lost only. Both Parties make procedural **arguments**. However, under the circumstances, due to the nature **of the arguments, it** would be proper to consider this dispute on its merits.

Considering the merits of the case, it is the conclusion of the Board that the Carrier's decision to withhold **the Claimant from service** May 9 to November 28, 1977, was based on **substantial and competent** evidence-that indicated he was not medically qualified to **perform service**. There **were legitimate** questions as to **the Claimant's** state of health and the Carrier's actions had foundation **in** reason **and** were justified. 'The Board should not disturb the **judgment** of the Carrier under the **circumstances**.

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**; end

That the Agreement **was** not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment **Board**

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.

