

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24371
Docket Number CL-24544

Edward M. Hogan, Referee

PARTIES TO DISPUTE:

{Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station **Employés**
(**Toledo**, Peoria and Western Railroad **Company**)

STATEMENT OF CLAIM: **Claim** of the System Committee of the Brotherhood (GL-9616) that:

1. Carrier violated the Agreement Rules, particularly Rules 25 and 34, when it failed, **commencing August 17, 1981, to return to service** Ms. **Davon L. Bearden** after she had submitted on August 6, 1981, **competent** evidence as to sufficient fitness and ability to **resume** her **employment** and

2. Carrier shall now be required to restore Ms. **Davon L. Bearden** to service with all rights unimpaired, and compensate her for all time lost **commencing** August 17, 1981, the latest date she should have been ret-d to service, and to continue until the **violation is** corrected.

OPINION OF BOARD:

On December 11, 1979, the Carrier notified the **Claimant** that she was being withheld **from** service **until** such time as her **personal** physician released her **from** medical care. This **action** was taken subsequent **to an** examination of the Claimant by the Carrier's medical staff. In February, 1980, the Carrier contacted the Claimant **requesting** that she notify the Carrier as to her present medical status. The **Claimant** indicated **that** she was ready to **resume** her service. and the **Carrier** scheduled **an** appointment with the Carrier's medical staff for February 27, 1980. The Carrier's **doctor** notified the Carrier, subsequent to the **examination** performed on February 27th, that the **Claimant** should not be **returned** to service **until** such **time as** she had been examined by a psychiatrist. She had failed to do so **as** per the instructions given the **Claimant** after the first visit to the Carrier's medical staff.

Claimant followed the instructions of the Carrier's medical staff and was examined by Dr. Beck, the psychiatrist **recommended** by the Carrier's medical staff. After being **examined** by Dr. Beck, the **Claimant** was restored to duty. For approximately **one** year, **Claimant** performed various clerical duties **for** the **Carrier**.

On May 27, 1981, the **Claimant** was **removed** from the service of the Carrier **following** a report **from** her supervisor advising of **work performance** and **attitude** inconsistencies. After an initial **examination** by the Carrier's medical staff, the **Claimant** was instructed not to report for work until such time as she could be evaluated by Dr. Ward, a Carrier psychiatrist. **Claimant** was **examined** by a **number** of psychiatrists during the following months, a **number** of them giving her favorable reports and releasing her **from** their care so she could return to work. However, on August 19, 1981, the Carrier's Chief Surgeon, Dr. **Iunesoete** advised the Carrier that the **Claimant** not be returned to the service of

the Carrier due to the **Claimant's having** a personality disorder -which would not allow her to **work** without disrupting other **employees**. On August 24, 1981, the Carrier notified the Claimant that she was disqualified **from** future **employment** with the Carrier. This appeal is a result of the dispute arising out of the "dismissal" or "disqualification" of the Claimant.

Award **8676** of the Second Division gives us guidance as to the facts presented in this case:

'This Board has numerous occasions held that a Carrier has the right (as well as duty) to determine an employees' fitness for service and ability to **perform** his **work** without **hazard** to himself or others, including the **right** to require employees to undergo medical examination. Such right to require a physical (or mental) **examination**, it **must** be clearly understood, must not be exercised arbitrarily or capriciously, and must be premised on a reasonable belief or substantial evidence, that such an **examination** is necessary before an employee may be permitted to return to work."

This dispute is particularly difficult because of a lack of evidence and/or transcript. While the Carrier's position is that **the-Claimant** was not "dismissed", rather administratively "disqualified", the Carrier's own Chief Surgeon suggested in his medical report **that** the Claimant be "**dismissed**." Furthermore, the roles of the **various** psychiatrists are clouded and confusing. We find ourselves faced with an incomplete record, the exact reason that this **Board** requires **evidentiary** hearings as a rule.

We find that **it** was not proper to "administratively" **remove** Claimant **from** the Seniority Roster. If doubts existed concerning her physical or mental condition she should have been placed **in** a disability status and so shown **on** the roster. Accordingly, **Claimant** must be restored to her seniority roster and shown as on a medical leave. Additionally, we hereby **remand** this matter for an independent **examination** by a neutral psychiatrist to determine **Claimant's** present capabilities to **perform her** duties as an employee of **the** Carrier. The cost of the **independent examination** is to be borne equally by the Claimant and the Carrier. In the **event** Claimant is found to be able to **perform** her duties she shall be returned to service. If she is found to be unable to perform her duties she shall be placed in a disability status. (See Award **20548 (Franden)** of this Division.) Inasmuch as a legitimate dispute exists concerning Claimant's mental condition **the(Carrier)** shall not be liable for wage losses incurred from the **time** of her **real** from service and the **time** she makes herself available for further **examination** as herein **ordered**.) This **examination** should be arranged within thirty (30) days of the date of our Order.

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 claim be **remanded** to the property.

A W A R D

Claim remanded to the property for handling **as** indicated **in** the **Opinion** and Findings.

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 **13th day of May 1983.**