

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. Beardon 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 **ms** 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. **Immesoete** 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 Divisim gives us guidance as to the facts presented in this case:

**'This** Board has m n-ous 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 r-al 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 Divisim 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 - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.