

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number' 24585
Docket Number CL-24546

Herbert L. Marx, Jr., Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, **Express** and Station Employees
PARTIES TO DISPUTE: (
(**Elgin, Joliet** and Eastern Railway Company

STATEMENT OF CLAIM: **Claim** of the System Committee of the Brotherhood
IGL-96141 that:

1. Carrier violated the effective Clerks' Agreement when it failed and refused to return Clerks J. M. **Keles**, M. A. **Wadman** and P. K. Eldridye to service in the order of their seniority, but rather, recalled employees junior in service to Claimants;

2. Carrier shall now compensate the above-named Claimants for eiight (8) hours' pay at the rate of the position they would have worked, or at the extra board guaranteed rate, **whichever** is applicable, commencing March 9, 1981, and for **each** and every day thereafter that a like violation occurs.

OPINION OF BOARD: The Claimants were furloughed employes, each with medical restrictions limiting the range of their work activities. In selecting three furloughed employes for extra board positions, the Carrier bypassed the three Claimants and awarded the positions to three less senior employes. The **Organization** argues that the Claimants were improperly deprived of these positions and should have been assigned to the extra board and given such work as within their physical limitations.

The Carrier argues that the **bulletin** for these positions (and generally for all **extra** board positions) specified that **selected** employes "Must be physically capable of performing all duties of positions protected by the Extra Board." This has been the established practice, according to the Carrier. The Organization's General Chairman seemed knowledgeable of this practice when he stated in **correspondence** "We are . . aware that the Carrier had, in the past, taken the position **that** only **employees** physically capable of performing the duties of any position covered thereby would be assigned to the extra board."

The General Chairman thereafter noted that an exception had been **made** to this **practice** by the Carrier in placing an **employee** (who was restricted from driving a vehicle) on the extra board. A single instance, however, does not **negate** a practice.

More significantly, however, the Organization argues that this **restriction** is unilaterally imposed by the Carrier and is not contained in Supplement No. 20, the Memorandum of Agreement governing the extra board. In addition, the Memorandum states:

"9. If an extra **employee** is not qualified to fill a position for which he stands, to be called, he need not be called to fill the position and the position may be filled by the next out **employee** who is qualified ...".

The Board finds, in concurrence with the Carrier's view, that the issue here is not "qualification" -- involving the training, knowledge and experience in a particular assignment -- but rather "**fitness**" (i.e., absence of physical limitation).

Rule 8 states in pertinent part as follows:

"... assignments . . . shall be based on seniority, fitness and ability, fitness and ability being sufficient, seniority shall prevail."

Clearly the "**fitness**" of the three Claimants was lacking insofar as some of the assignments to which they might be called as members of the extra board. The board finds **that** the established practice noted above in reference to extra board assignment is in conformance with Rule 8. **By** their individual medical restrictions, the Claimants did not lose their "qualification" for certain duties, but were in fact without the necessary "**fitness**" for the variety of assignments to which their extra board assignment would call them (**and** for **which** they would be receiving extra board pay **guarantee**).

The Board **finds** that the Carrier acted within the provisions of Rule 8 and in accord with established and recognized practice thereunder (despite a single exception noted by the Organization).

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 **Employee** 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

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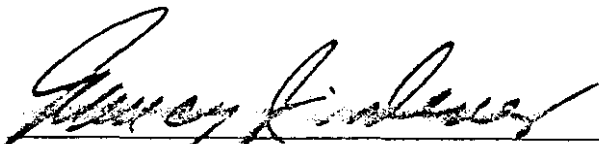
Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of December 1983.