

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26509
Docket Number MW-25947

Eckehard Muessig, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier improperly withheld Mechanic J. H. Bedford from service for the period beginning on May 16, 1983 and extending through June 27, 1983 (System File C-TC-1659/MG-4096).

2. The Carrier shall not allow Mechanic J. H. Bedford eight (8) hours of pay for each work day within the claim period described above and he shall be compensated for all overtime worked by the employee filling the claimant's position during the claim period."

OPINION OF BOARD: This dispute arose after the Claimant had had back surgery on April 12, 1983. Following this surgery, the Claimant's personal physician and the Carrier's designated physician released the Claimant to return to service effective with May 16, 1983. However, the Medical Qualification Notice given to the Claimant subsequently was forwarded to the Carrier's Chief Medical Officer. That Officer then advised the Claimant by letter on May 20, 1983, that he could not return to duty for six to eight weeks following surgery. He attached a job description for a Machinist to his letter, which detailed the physical requirements for that position, and asked the Claimant to show these requirements to his treating physician.

At this stage, while the Organization's contentions are not without merit because Carrier's designated physician had cleared the Claimant to return to work, the key question here is whether the Carrier's Chief Medical Officer had the right to make the final determination concerning the employee's physical capacity to perform his assigned duties. While the Chief Medical Officer did not have substantive medical data at that point in time, we do not find, given the nature of the operation and the Medical Officer's knowledge of the Claimant's position requirements, that his decision "as an abuse of his discretion. Moreover, the Board notes that nothing in the Chief Medical Officer's decision would have restricted the Claimant from returning to the doctor who had earlier examined him for a reexamination in light of the physical requirements provided by the Chief Medical Officer. In fact, the Claimant did return for a reexamination and he was returned to duty on June 23, 1983.

The Carrier has the right to determine an employee's fitness for duty from a doctor of its choice. Under all the circumstances, we do not find that the time this review took was unreasonable.

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

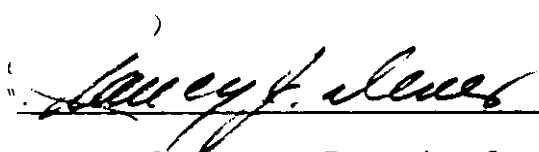
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: "


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.