

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26558

Docket Number CL-26275

Robert W. McAllister, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: {
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9985) that:

1. Carrier violated the Clerks' Rules Agreement when it physically disqualified Claimant R. Habermehl from position of Accounts Payable Specialist No. 242 on March 2, 1984.

2. Carrier's action is in violation of Rules 3, 4, 7 and Agreement of December 19, 1983, regarding physical examinations.

3. Carrier shall now be required to compensate Claimant Habermehl for all time lost, seniority, vacation and all other rights unimpaired, total time lost, ten (10) days, March 5 through 16, 1984, total **\$1,037.50."**

OPINION OF BOARD: The Claimant was physically disqualified by the Carrier on March 2, 1984. The Claimant's assignment was Job **#242**, Accounts Payable Specialist, St. Louis, Missouri. By way of background, the record shows the Claimant's personal physician authored a note on February 21, 1984, which stated:

"To whom it may concern,

Rose Habermehl has been receiving treatment for an arthritic condition in the cervical spine (neck). It is important that she avoid long periods of sitting in certain positions which strain this area (i.e. **in** front of a computer **or** similar office machine). She should **be** medically excused from any extended period of such work."

On March 2, 1984, the Claimant was advised as follows:

"Our Chief Medical Officer has determined that you are not qualified for work on positions requiring sitting for periods of two or **more** hours.

Since we do not have any positions which require sitting for only short periods of time, this is to advise that **you are hereby** disqualified from service in the General Accounting Office until such time as your physical condition improves. This is effective with the close of business this date."

By letter dated March 13, 1984, the Claimant's personal physician modified her February 21, 1984, note stating that the Claimant could continue to do her usual work for the normal working day of eight hours, but should not be assigned any overtime work. The Carrier, upon receipt of this opinion, informed the Claimant she was now considered qualified **to** return to service on positions not requiring any periods of overtime. Effective March 19, 1984, the Claimant exercised her seniority to Job #113, General Clerk in the Payroll Accounting Section of the General Accounting Office at St. Louis. The rate of pay exceeded that of her former position.

The Organization **argues** that the lost time involved was a result of the Carrier's Chief Medical Officer's judgment and ensuing disqualification of the Claimant. This Board finds that challenge of the Chief Medical Officer's judgment to be without foundation. We conclude the Claimant's disqualification was based entirely upon the findings and recommendations of her own physician. The Carrier could not ignore those recommendations. To do so would have been irresponsible. The Carrier has a responsibility to protect the safety and well being of its **employees**. It acted upon advice supplied by a competent physician of the Claimant's own choosing. The Carrier's Chief Medical Officer acted in a professional and prudent manner in determining the Claimant's physical fitness.

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.

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Docket Number CL-26275

Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dayer - Executive Secretary

Dated at Chicago, Illinois this 30th day of September 1987.