

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (L. O. Ferguson
(
(Norfolk Southern Corporation

STATEMENT OF CLAIM:

"On April 24, 1986 I requested a hearing as provided for in Rule 15 of the Schedule Agreement between NS Corp. and BRAC, eff. June 1, 1982. NS Corp. has refused to grant me a hearing for unjust treatment. I had exercised seniority on a position in the Manager Material Accounts Office and had been granted that job but carrier refused to let me occupy that position and instead forced me to occupy a 'Key Punch operator' job, against my objection."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant, was at the time of the incident that gave rise to this Claim employed as a Clerk in Carrier's Tariff Bureau in Roanoke. It appears from the record that Claimant and other employes in the department at times did not get along and friction resulted. Carrier directed Claimant to submit to an examination by a psychiatrist. Claimant was diagnosed as having a personality disorder, mixed with passive-aggressive and paranoid features. Carrier's medical director determined that Claimant could not be returned to service in the Tariff Bureau.

Claimant was eventually placed in a vacant position in the Mechanical Department. He was not allowed to exercise seniority to any other position. As a result of these actions by Carrier, Claimant requested an Unjust Treatment Hearing under Rule 15 of the Agreement. Carrier denied the request, indicating that Rule 15 did not apply but since Claimant had been medically disqualified from holding a position in the Tariff Bureau, any challenge to that disqualification must proceed under the machinery for resolving such disputes contained in Rule 42, not Rule 15.

This Board has reviewed the record and agrees with Carrier's position. Procedures to challenge medical disqualification are contained in Rule 42, paragraph (a)2. That paragraph makes allowance for revision of Claimant's medical status by a three (3) doctor panel. That is the avenue Claimant should have followed and not requested an Unjust Treatment Hearing authorized by Rule 15. Due to the passage of time, it appears that Claimant has moved to a job he wants and the unjust treatment issue is now moot.

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 6th day of June 1989.