

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(William Yonker
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

"Claim of William Yonker for day's pay for being held out of service from March 14, 1984 until his return to service on June 11, 1984."

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 waived right of appearance at hearing thereon.

This case arises from the Claim of Machine Operator William L. Yonker that he was improperly withheld from service beginning March 14, 1984.

On May 1, 1984, the Claimant filed a Claim with Carrier's Manager of Engineering and the Organization's General Chairman, alleging that he had been illegally held out of service since March 14, 1984, and requesting pay for each day as well as payment for mileage and overtime until returned to service.

By letter dated July 9, 1984, Carrier advised the Claimant that he had been medically disqualified from service on November 29, 1983, and again on April 3, 1984, and was not found qualified to return to duty until June 11, 1984. Carrier declined the Claim on that basis. The General Chairman appealed the Claim, by letter dated August 28, 1984, contending that Carrier had violated Rule 56 of the Agreement when it failed to allow the Claimant to work from March 14, 1984, until returned to duty. Carrier thereafter declined the appeal on October 22, 1984, noting that the Claimant was found medically disqualified by Carrier's Medical Department and that no evidence had been presented to support a violation of any provision of the Agreement.

Conference on the Claim was held on November 14, 1984, without resolution of this dispute. Carrier in its November 20, 1984 correspondence with the Organization, reiterated its position that the Claim was not meritorious, and in support thereof referred the Organization to medical documents provided at the conference which, in Carrier's view, provided evidence that Claimant was not qualified to return to service during the period of the Claim.

Nothing further was heard from the Organization on this matter, the record shows. On July 23, 1985, Carrier was notified by the Board that the Claimant's attorney intended to file a submission on the dispute between the Claimant and the Carrier.

Our review of the record clearly shows that the Claim as handled on the property and the Claim appealed to this Board are not the same. The initial Claim and that discussed on the property involved the Claimant's assertion that he was not allowed to resume service on March 14, 1984. The correspondence between the Carrier and the Organization indicates that Carrier responded to the issue by asserting that Claimant was not found physically qualified by the Medical Department until June 11, 1984. From all the evidence before us, it seems clear that the Claim handled on the property concerned the question of whether or not Claimant was improperly withheld from service.

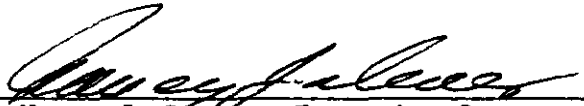
The appeal to the Board is substantially different. As set forth in the Attorney's letter of July 15, 1985, Claimant now alleges that he is entitled to payment due to an adjustment in the disability benefits from the Railroad Retirement Board. Having reviewed the record in detail, it is apparent that this is an entirely new issue, never raised on the property. There are many Awards which can be cited for the well-established principle that where there is a substantial variance between the Claim handled on the property and that presented to the Board, we cannot resolve the dispute. See, e.g. Third Division Awards 16607, 13235, 20279. That principle controls the outcome in this case, and dictates that the Claim must be dismissed.

We note, too, that even if this Board were to consider the merits of Claimant's original allegations, the Claim would still be denied. We find substantial evidence in the record to support the Carrier's decision, and absent some showing that Carrier acted arbitrarily, capriciously, or in bad faith, we will not substitute our judgment for that of the Carrier.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.