

Award No. 14127
Docket No. MW-13805

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CLINCHFIELD RAILROAD COMPANY**

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

1. The Carrier violated the Agreement when it withheld Mr. Otis F. Bryant from service from September 26, 1961 to January 15, 1962 without just and sufficient cause.
2. Claimant Bryant be reimbursed for the exact amount of monetary loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant Otis F. Bryant was employed and held seniority rights with the Carrier for a period of ten years prior to the period involved herein.

On September 26, 1961, while engaged in the work of moving a 3 inch by 10 inch scaffold plank between the girders of the Copper Creek bridge, the claimant sustained a broken bone in his foot. As the result of this injury, he was required to remain under the care of a doctor and away from work for nearly seven weeks.

Upon being released by his doctor to return to work, he was directed to and did report to the Carrier's Chief Surgeon for a complete physical examination. Following said examination, the claimant was advised that, due to an alleged vision deficiency, he would not be permitted to return to work.

On November 30, 1961 and on December 18, 1961, the claimant, voluntarily and at his own expense, submitted to an examination by two doctors. The findings of these two doctors were that the claimant did have a minor vision deficiency which was not of sufficient severity to warrant disqualification.

When confronted with the opinions and findings of these two doctors, the Carrier agreed to permit the claimant to return to work, which he did, effective January 15, 1962.

Thus, as the result of the aforesited incidents, the claimant was away from work from September 26, 1961 to January 15, 1962, receiving no compensation whatsoever from the Carrier during this period.

OPINION OF BOARD: Petitioner maintains that Carrier violated the Agreement by withholding Claimant from service from September 26, 1961, to January 15, 1962, without just and sufficient cause.

Claimant sustained a foot injury on September 26, 1961, and was away from work for seven weeks for that reason until released by his doctor. He then was directed to report to Carrier's Chief Surgeon for a physical examination and was advised, after the examination had been held, that he had a vision deficiency and would not be permitted to return to work until that defect had been corrected. Thereafter, on November 30 and December 18, 1961, Claimant voluntarily and at his own expense was examined first by an optometrist and then on the latter date, by an eye specialist. Both agreed that he has minor vision deficiency of long standing, but no eye disease. Claimant was then restored to service.

Since no rule of the controlling Agreement relates directly or even by fair implication to such matters, Carrier had every right to require the examination in question and to disqualify Claimant, on the advice of its Chief Surgeon, for a physical defect, unless its decision in that regard represents an arbitrary exercise of power. See Awards 4489, 8218 and 10950.

Carrier restored Claimant to service after a licensed physician found him qualified, and there is no evidence in the present case that Claimant was subjected to unfair discrimination or that the recommendations and decisions of Carrier's Chief Surgeon and Superintendent were capricious or in bad faith.

Under the circumstances, no valid basis is perceived for the claim, and it will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of January 1966.