

Award No. 16284
Docket No. TE-17144

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Rock Island and Pacific Railroad, that:

1. Carrier improperly removed Mr. R. M. Goodwin from service on December 3, 1965.

2. Carrier shall reinstate R. M. Goodwin to his regular position with all rights unimpaired, and paid for all time lost subsequent to December 3, 1965.

OPINION OF BOARD: The record shows that Claimant was granted a leave of absence for medical reasons from March 22, 1965, to May 10, 1965, during which time his vocal cords were removed due to a cancerous condition, necessitating his use of a mechanical device to accomplish speech. He returned to work on his position as operator-ticket clerk at Amarillo, Texas, on May 10, 1965.

It subsequently became apparent to Claimant's supervisors at Amarillo that his speech difficulties interfered with the performance of his duties, which required conversations with passengers and the public regarding ticket sales, and the verbal communication of train orders and train line-ups. On November 10, 1965, Claimant was again examined by Carrier's physician, with result that the Chief Surgeon ordered a field test of his speaking abilities. Claimant was removed from service on December 3, 1965, as a result of the field test.

The Petitioner alleges a violation of the applicable time limit rule by the Carrier in the handling of the dispute on the property. Based on the record, we do not find a valid basis for such allegation.

While we may sympathize with any person who may be as unfortunate as Claimant with regard to his physical condition, it is well recognized that it is the prerogative of the Carrier to determine the physical qualifications of its employees so long as its findings are not arbitrary, capricious or exercised in bad faith. In the instant case the Carrier, after permitting Claimant to return to work following the removal of his vocal cords, determined, on

the basis of actual field test, that he could not adequately and safely perform the duties of his position. We cannot say that such action was capricious, arbitrary, or in bad faith. We must, therefore, deny the claim.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May 1968.