



Award Number 17512

Docket Number TE-18023

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

PENN CENTRAL

(Former New York Central Railroad-Western District)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Penn Central Railroad that:

That Mr. B. Allen Stone, extra employee hired on July 25, 1967 and physically disqualified on or about August 16, 1967 be given an opportunity to be examined by a neutral doctor as agreed to by the parties in accordance with Case No. 81 of Special Board 173.

OPINION OF BOARD: Claimant began work for the Carrier as a telegrapher on July 25, 1967, under an application for employment as a clerk dated July 6, 1967. On August 16, 1967, he was notified that his application was rejected for physical reasons. He was not permitted to work thereafter.

Claimant filed a written complaint, which is not presented in the record, but which was referred to by the District Chairman, in further handling, as a request for formal notice of his disqualification and claim for reinstatement with full pay and seniority rights unimpaired.

The matter was not resolved in local handling and was appealed by the General Chairman to the Carrier's highest officer in the form in which it was subsequently appealed to this Board; that is, a claim that Claimant Stone "be given an opportunity to be examined by a neutral doctor as agreed to by the parties in accordance with Case No. 81 of Special Board 137."

Under the Railway Labor Act, and our rules of procedure the only question properly before us is that presented in the formal statement of claim. Other matters, such as alleged applicability of Rule 32, which are not shown to have been placed in issue on the property are not before us, and therefore can be given no consideration.

The basis of the claim is that Carrier failed to observe an alleged agreement "in accordance with Case No. 81 of Special Board 137". However, nowhere in the record of handling on the property or before the Board do the representatives of the employees show the content of such agreement, or that it even exists.

It is well established that the burden of establishing grounds for support of a claim rests with the petitioner. In the present case not a shred of evidence is presented as constituting grounds for the claim. Under these

circumstances the Board has no alternative but to dismiss the claim for lack of proof.

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 no violation of agreement is shown.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October 1969.