

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20548
Docket Number CL-20603

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
(
(Clinchfield Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7468) that:

1. Carrier shall compensate Mr. J. P. Letterman for eight (8) hours' pay at the rate of the Agency position at Erwin, Tennessee for each work day that he is held off that assignment, beginning September 1, 1972 and continuing until such time as he is allowed to resume duty.

OPINION OF BOARD: The dispute herein arose following a conference agreement of August 18, 1972, to reduce discipline of dismissal of claimant to suspension ending August 31, 1972, the physical examination of claimant and the result of that examination.

There apparently were numerous "off-the-record" discussions prior to the conference agreement of August 18, 1972, and the record is conflicting as to just what was said with respect to a physical examination of claimant. However, the conference agreement signed by the claimant and his representative contains nothing concerning such physical examination. It is also significant that no objection was entered to claimant undergoing the physical examination on August 24, 1972, and the objection arose after claimant was advised of the result of that examination.

It is well settled that a Carrier has the right to determine the physical qualifications of its employees. Such right may be restricted by Agreement, but the record herein does not justify a finding that the Carrier's rights were restricted by Agreement. However, such a determination should be based on reasonable medical certainty. (See Third Division Award 16316 and Second Division Award 6539). The Board makes no pretense of being able either to resolve a conflict in technical medical testimony, or to diagnose emotional problems.

Based on the present record, we find that there is need for additional medical data to determine the physical fitness of claimant to return to work. Therefore, we direct that Carrier and Claimant (or his representative) select a neutral third doctor for the purpose of examining claimant, and that the Carrier's physician, Claimant's personal physician and the neutral doctor present a written report to this

Division of the Board, within sixty (60) days of the date of this Award, stating their conclusions regarding the physical qualification of claimant for restoration to service as of August 31, 1972, and at present. The neutral doctor's report need not be concurred in by both of the other doctors. A detailed explanation of the duties of claimant as agent shall also be supplied to the neutral doctor (by Petitioner and Carrier) so that he may properly evaluate the physical fitness of claimant to perform the job.

Upon receipt and consideration of the medical reports directed above, the Board will make its final disposition of this claim.

To avoid any confusion, the doctors' reports above requested should be submitted through the Carrier, with copies furnished the petitioner.

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 claim be remanded to the property for additional medical data.

A W A R D

Claim remanded to the property for additional medical data as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulke
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 2 TO THIRD DIVISION AWARD NO. 20548

DOCKET NO. CL-20603

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

NAME OF CARRIER: Clinchfield Railroad Company

The Board felt that its Interpretation No. 1 to Award 20548, rendered on November 26, 1975, would result in the Board being furnished sufficient medical information to render a final award. However, such has not been the case, and the Board finds it necessary to seek further information before attempting to render a final award.

It appears from the record now before the Board that claimant was examined on the basis of a private patient on April 1, 1976, by the neutral doctor previously agreed to. A report of that examination, as well as report of psychiatric examination of May 20, 1976, has been furnished to the Board. However, it is not clear whether the reports were intended to meet the requirements of Award No. 20548 and Interpretation No. 1. The Board, therefore, directs that the General Chairman of the Organization and the Director of Labor Relations of the Carrier join in addressing a letter to the neutral doctor previously agreed to, Dr. Ernest Yount, inquiring whether the doctor can, from the examinations performed, furnish a report that would meet the requirements of Award No. 20548 and Interpretation No. 1 thereof.

Referee Robert A. Franden, who sat with the Division, as a neutral member, when Award No. 20548 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
by Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1977.