

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21629  
Docket Number CL-21428

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employes  
(  
(Detroit, Toledo and Ironton Railroad  
( Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-8015, that:

(a) The Carrier violated the rules agreement dated May 1, 1966, as amended January 1, 1971, particularly Rules 1, 2, 3, 6, 11, 14, 16, 19, 45, 37 and the National Vacation Agreement, Section 7 of the December 17, 1941 Agreement, when the Carrier removed J. Collins from his position effective 3:00 P.M., February 21, 1974.

(b) The Carrier now be required to compensate J. Collins, Clerk and Stores Attendant, Forty dollars and ninety-eight cents (\$40.98), plus any other compensation due him, restore his seniority rights unimpaired, commencing February 21, 1974 and continuing until such violations are corrected.

OPINION OF BOARD: Subsequent to a physical examination, Claimant was advised to exercise his seniority on a clerical position - for which he qualified - which did not entail climbing or heavy lifting. When he refused to do so, he was removed from his position.

Although Claimant denies the propriety of the removal from the position on medical grounds, we are unable to agree with him. We feel that Carrier's action (considering the type of job involved, and its duties and responsibilities) was based upon substantive medical evidence which should not now be disturbed.

We have noted, however, throughout the handling of this dispute, the repeated assertion by Carrier that this Claimant was not terminated from employment but, rather, that he was removed from his position pending an exercise of seniority. Under this record, we are inclined to afford Claimant a current opportunity to exercise the

seniority available to him at the time, in order to obtain a position (for which he is medically qualified) to which his seniority entitles him.

If Claimant desires to exercise his seniority accordingly, he must do so within a reasonable period of time after he is made aware of this Award.

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.

A W A R D

That Claimant may exercise his seniority prior to September 15, 1977, as noted in Opinion of the Board, above.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A.W. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.

