

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21991  
Docket Number MS-21535

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (J. D. Eller  
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(Seacoast Transportation Company

STATEMENT OF CLAIM: Claim of J. D. Eller:

1. Carrier violated the Agreement when on October 17, 1974, it denied Truck Operator J. D. Eller the right to displace a junior employee at Tampa, Florida.

2. As a consequence thereof, Carrier shall:

- A. Reinstate J. D. Eller with seniority and all rights unimpaired.
- B. Compensate J. D. Eller for all wages and other losses sustained as a result of Carrier's violative act.

OPINION OF BOARD: Claimant was employed as a Truck Operator by the Seacoast Transportation Company on January 23, 1959. The Seacoast Transportation Company is a wholly-owned subsidiary of the Seaboard Coast Line Railroad Company. As a result of eye surgery in May, 1968, Claimant's vision went to 20/400 in his right eye. Claimant was therefore medically restricted by the Company's Chief Medical Officer from driving any vehicle on Company business. He was allowed to return to service as a Helper, however. Claimant worked as a Helper until the Helper's Board was reduced, effective October 10, 1974. On October 15, 1974, Claimant attempted to exercise his seniority on a Truck Operator's position at Tampa, Florida. The Company denied his request due to his medical disqualification. Claimant asserts that he was arbitrarily denied his seniority rights when he was not allowed to displace a junior employee.

Initially, the Company contends that they are not a carrier within the meaning of Section 1, First of the Railway Labor Act, as amended, and that this Board therefore lacks jurisdiction over the current dispute. This Board fails to find the Company's argument persuasive. Insofar as we can discern, the Seacoast Transportation Company is indeed a carrier as contemplated by the Railway Labor Act. Accordingly, we have jurisdiction over the dispute submitted by the Claimant. (See Award No. 21990).

It is the considered opinion of this Board that when the Company disqualified Claimant from service as a Truck Operator, its decision was not arbitrary, capricious or unreasonable. It has been consistently held by this Division that management has the right to determine the physical fitness of its employees. In the claim before us, the Company's Chief Medical Officer disqualified Claimant from driving any vehicle on Company business after his vision went to 20/400 following eye surgery. In reaching his decision, we hold the Chief Medical Officer did not act arbitrarily, capriciously or unreasonably. Accordingly, the medical disqualification of the Claimant will not be disturbed by this Board.

The Claimant alleges that two other employees had eye problems similar to his, yet the Company did not disqualify them. However, the Company denies that the physical condition of the two employees in question was similar to the Claimant's. There is simply no probative evidence in the record to support the Claimant's assertion. Accordingly, this Board is unable to find that Claimant was discriminated against as he suggests.

The evidence fails to support the Claimant's position herein, and his claim must be denied as a result.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.