

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22050  
Docket Number CL-22178

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8464) that:

1. Carrier violated and continues to violate the terms of the prevailing agreement between the parties when it refused to permit clerk, J. H. Threadgill, to return to work as requested in her letter of July 30, 1976.

2. Carrier shall now be required to allow Clerk Threadgill to return to the service of the Carrier in accordance with her request.

3. Carrier shall now be required to allow clerical employee, J. H. Threadgill, an additional day's pay beginning October 15, 1976, at the rate of a position to which her seniority would entitle her and continuing until such time as she is allowed to exercise seniority under the existing rules of the clerical agreement.

OPINION OF BOARD: Due to a knee injury Claimant had been on leave of absence from the service of the Carrier for some time. The Claimant was released by her personal physician and advised that she could return to work providing that she avoid prolonged standing and walking or walking on uneven ground. Claimant had been a steno-clerk prior to her injury.

Claimant was advised that it would be necessary for her to take a physical examination under the supervision of the Carrier's physician prior to her returning to work. Claimant underwent the examination after which a report was made to the Carrier advising that it was unsatisfactory for Claimant to return to work due to her physical condition. Said opinion was based on the examining physician's findings with regard to the condition of Claimant's knee, her high blood pressure and her "extreme obesity."

The Claimant has disputed the medical report of the Carrier's physician. She visited her own medical consultants where she obtained medical advice to the effect that her blood pressure was within normal limits. This, coupled with her previous release from her doctor and the fact that her health, other than the knee injury, had not changed since her previous duty, led Claimant to challenge the findings of the Carrier's medical consultant.

We have held many times that the Carrier has the prerogative to make physical fitness a requirement of employment provided the Carrier is not arbitrary. We affirm these holdings. However, we have also held that a determination of physical fitness must be based on reasonable medical certainty. In matters such as that before this Board we are asked to resolve conflicting medical reports as abstracted in the record to determine whether the Carrier's determination is arbitrary. This is not an acceptable procedure. In Award 20548 this Board established a procedure to resolve such conflicts in medical opinion, which procedure is applicable to the case at bar.

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 her representative select a neutral third doctor for the purpose of examining the Claimant and that the Carrier's physician, the Claimant's physician and the neutral doctor present a written report to this division of the Board within 60 days of the date of this award stating their conclusions regarding the physical qualifications of the Claimant to return to service on August 10, 1976 and at present. The neutral physician shall be supplied with a job description of the positions for which Claimant would be eligible, including a description of the duties to be performed in that position. Upon receipt of the medical report this board will make its final decision.

In addition, the Organization alleges that Carrier failed to respond to this claim within 60 days as provided in Article V of the August 21, 1954 National Agreement. We find no merit in this contention.

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 should be remanded.

A W A R D

Claim remanded to the property in accordance with this Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulis  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO THIRD DIVISION AWARD NO. 22050

DOCKET NO. CL-22178

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

NAME OF CARRIER: St. Louis-San Francisco Railway Company

On May 12, 1978, this Board rendered Award 22050 in this matter. The substance of said award was a direction to carrier and claimant or her representative to select a neutral doctor to examine claimant and return a report of his examination, along with that of the carrier's physician and the claimant's physician to this Board within sixty days of the award.

Since the date of said award no third and neutral physician has been agreed upon. It does us no benefit to belabor the futile exercises that have transpired in attempting to select the neutral doctor on the property. It appears that parties are now in need of explicit direction to implement the award of this Board.

Accordingly, we direct that the carrier name a physician of its choice and the claimant name a physician of her choice and both carrier and claimant empower their respective physicians to agree with the other on a third and neutral physician and that the selection of said third physician can be made within thirty days after the adoption by the Board of this Interpretation and that the report to the Board directed in Award 22050 be submitted to this Board no later than sixty days from the date of this Interpretation.

Referee Robert A. Franden, who sat with the Division as a neutral member when Award No. 22050 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. M. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of February 1979.