

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22415  
Docket Number SG-22337

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Consolidated Rail Corporation  
( (Former Erie Lackawanna Railway Company)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood  
of Railroad Signalmen on the former Erie Lackawanna  
Railway Company:

System Docket EL-4  
Atlantic Region - Hoboken Division Case 121

On behalf of Mr. Paul Burke, Leading Maintainer, for all  
time lost from March 10 through July 9, 1976, while out of service on  
the basis of his physical condition."

/General Chairman file: #548 - P. Burke - #166241, Atlantic Region/

OPINION OF BOARD: As result of periodic medical examination by  
Carrier's Medical Examiner, Claimant was notified  
under date of March 5, 1976, that, because his condition had been  
found to be "exogeneously obese," he would be qualified for work  
for 6 months on condition that he be restricted from climbing poles.  
However, on Carrier's finding that there were no positions available  
which did not require Claimant to climb poles, he was advised by  
Carrier on March 9, 1976, that he would not be permitted to resume  
duty.

The Petitioner has progressed this claim contending that  
the Carrier is in violation of Agreement Appendix "C" - Understanding  
on Physical Reexaminations. Appendix "C" provides that the General  
Chairman may progress the matter with the Chief Surgeon and only  
"upon presentation of written authorization by the employee" the  
Chief Surgeon will make the medical findings in the case available  
to the General Chairman. The Claimant's authorization in this case  
is dated May 6, 1976. After brief interim handling, Claimant was  
returned to service in mid-July 1976.

Inasmuch as Claimant was returned to service, the question of the selection of a neutral physician became academic thereafter. To show the Carrier to have been at fault between May 6 and the return of Claimant to service, it would be necessary to show that the Carrier unreasonably delayed in entering into the selection of the neutral and thereby could reasonably be said to have delayed the Claimant's earlier return. This record does not lend itself to such showing.

Accordingly, we find that the Carrier has not been shown to have violated Appendix "C". In light of our findings in the merits of this dispute, we find it unnecessary to resolve the procedural issue raised by Carrier.

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.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1979.