

C E 1

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22553
Docket Number CL-22520

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8527) that:

(a) Carrier violated the Agreement at Charlotte, North Carolina, when it disqualified Mr. R. G. Register, Clerk, effective January 23, 1976, for alleged physical reasons, and refused to agree to a neutral doctor to resolve the issue.

(b) Carrier shall be required to restore Mr. R. G. Register to the service of the Carrier and compensate him for all time lost, beginning January 23, 1976, and continuing until he is restored.

OPINION OF BOARD: Following an absence from Carrier's service of about two and one-half years, claimant was required to undergo a physical examination and, on May 19, 1975, was approved to return to work as an outside yard clerk at Charlotte, North Carolina. While claimant met Carrier's minimum physical standards when examined, the examining physician detected early indication of cardiac deficiencies, and the Carrier's Chief Surgeon determined it necessary that claimant be re-examined in six months.

On December 23, 1975, claimant was re-examined by Carrier's physician at Charlotte, North Carolina, who found that claimant's cardiac condition had deteriorated; that he had early signs of congestive heart failure and was found to have "mitral regurgitation, mitral insufficiency secondary to papillary muscle dysfunction and premature ventricular contractions." As a result of this examination, the Carrier's physician determined that claimant did not meet the Carrier's physical standards for his position, specifically that no employee will be permitted to remain in service if he has "a history of clinical diagnosis of a condition or disease known to lead to syncope, dyspnea, collapse or congestive heart failure."

Claimant was sent to the Sanger Clinic in Charlotte for a full evaluation of his heart condition. On February 4, 1976, Dr. Norris Harbold, of the Sanger Clinic, confirmed the Carrier's physician's earlier findings, and added that in his opinion claimant would be a candidate for open heart surgery in the near future. With this information, the Carrier's Chief Surgeon disqualified claimant from continuing service as a yard clerk.

The Board agrees that the Carrier alone has the duty and the right to set and enforce medical standards for its employees. This is evidenced by the Federal Employers Liability Act, and the many court decisions cited in the record before the Board. In the exercise of that right the Carrier's minimum medical standards include:

"no history or clinical diagnosis of a condition or disease known to lead to syncope, dyspnea, collapse or congestive heart failure."

The governing collective bargaining Agreement does not diminish the Carrier's right to determine medical qualification of clerks. There has, however, been an understanding between the Organization and the Carrier over many years that adjudication of a medical dispute by a neutral doctor will be provided when "the findings of the employee's doctor conflict with those of the Carrier's doctor." This understanding only subjects the disputed medical condition of a disqualified employee to neutral determination. It does not require the adjudication of the validity of the standards which the Carrier has the right to determine.

The record before the Board does not contain evidence of a conflict in findings between claimant's physician and Carrier's physician. There is, therefore, no proper basis for the Organization's contention that the Carrier violated the Agreement when it refused to agree to a neutral doctor to resolve the issue of claimant's disqualification. There is, likewise, no basis for the claim for compensation for time lost by claimant while out of service. X-1

The record does show that in November, 1978, the Carrier received information that claimant had undergone open heart surgery to replace his mitral valve. He subsequently underwent a return to work physical examination, in which his condition was found to conform to Carrier's minimum medical standards and he was approved

to return to service, and was so notified on January 18, 1979. He actually returned to active service January 31, 1979. This later development, of course, has no bearing on the claim before the Board, which, for the reasons previously stated, must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1979.