

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24317  
Docket Number CL-23997

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,  
{ Freight Handlers, Express and Station Employees  
{ Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9379) that:

(a) The Carrier violated the terms of the General Clerical Agreement when it held Mr. Lester S. Winn from service beginning May 9, 1977, and did not schedule an investigation until August 2, 1977, in violation of Rule 27 and also, after belatedly holding such investigation found him medically disqualified for service without any evidence to substantiate such findings and,

(b) The Carrier shall now restore Mr. Lester S. Winn to service with seniority and other rights unimpaired and compensate him for all losses sustained as a result of its wrongful actions.

OPINION OF BOARD: On March 22, 1977, the Claimant marked off his assignment because he was sick and did not return to work until May 9, 1977. The Carrier was advised by Doctor I. Kaplan by a letter dated July 14, 1977, that the Claimant was medically disqualified. Although, medical disqualifications are not normally handled in the railroad industry under the discipline rule, the Parties in this case have a practice of doing so. An investigation was held August 19, 1977. Based on the evidence, the Carrier disqualified the Claimant. The Claimant was reexamined on November 2, 1979, and was reinstated on November 28, 1970; thus, the Claim is for time lost only. Both Parties make procedural arguments. However, under the circumstances, due to the nature of the arguments, it would be proper to consider this dispute on its merits.

Considering the merits of the case, it is the conclusion of the Board that the Carrier's decision to withhold the Claimant from service May 9 to November 28, 1977, was based on substantial and competent evidence that indicated he was not medically qualified to perform service. There were legitimate questions as to the Claimant's state of health and the Carrier's actions had foundation in reason and were justified. The Board should not disturb the judgment of the Carrier under the circumstances.

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.

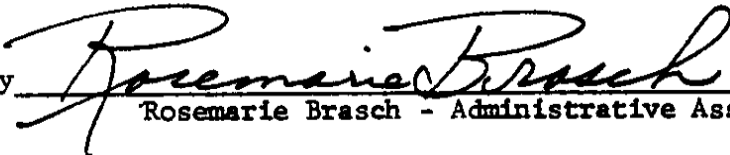
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.

