

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24371
Docket Number CL-24544

Edward M. Hogan, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
{ Toledo, Peoria and Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9616)
that:

1. Carrier violated the Agreement Rules, particularly Rules 25 and 34, when it failed, commencing August 17, 1981, to return to service Ms. Davon L. Beardon after she had submitted on August 6, 1981, competent evidence as to sufficient fitness and ability to resume her employment and

2. Carrier shall now be required to restore Ms. Davon L. Bearden to service with all rights unimpaired, and compensate her for all time lost commencing August 17, 1981, the latest date she should have been returned to service, and to continue until the violation is corrected.

OPINION OF BOARD: On December 11, 1979, the Carrier notified the Claimant that she was being withheld from service until such time as her personal physician released her from medical care. This action was taken subsequent to an examination of the Claimant by the Carrier's medical staff. In February, 1980, the Carrier contacted the Claimant requesting that she notify the Carrier as to her present medical status. The Claimant indicated that she was ready to resume her service, and the Carrier scheduled an appointment with the Carrier's medical staff for February 27, 1980. The Carrier's doctor notified the Carrier, subsequent to the examination performed on February 27th, that the Claimant should not be returned to service until such time as she had been examined by a psychiatrist. She had failed to do so as per the instructions given the Claimant after the first visit to the Carrier's medical staff.

Claimant followed the instructions of the Carrier's medical staff and was examined by Dr. Beck, the psychiatrist recommended by the Carrier's medical staff. After being examined by Dr. Beck, the Claimant was restored to duty. For approximately one year, Claimant performed various clerical duties for the Carrier.

On May 27, 1981, the Claimant was removed from the service of the Carrier following a report from her supervisor advising of work performance and attitude inconsistencies. After an initial examination by the Carrier's medical staff, the Claimant was instructed not to report for work until such time as she could be evaluated by Dr. Ward, a Carrier psychiatrist. Claimant was examined by a number of psychiatrists during the following months, a number of them giving her favorable reports and releasing her from their care so she could return to work. However, on August 19, 1981, the Carrier's Chief Surgeon, Dr. Immesoete advised the Carrier that the Claimant not be returned to the service of

the Carrier due to the Claimant's having a personality disorder which would not allow her to work without disrupting other employees. On August 24, 1981, the Carrier notified the Claimant that she was disqualified from future employment with the Carrier. This appeal is a result of the dispute arising out of the "dismissal" or "disqualification" of the Claimant.

Award 8676 of the Second Division gives us guidance as to the facts presented in this case:

"This Board has on numerous occasions held that a Carrier has the right (as well as duty) to determine an employees' fitness for service and ability to perform his work without hazard to himself or others, including the right to require employees to undergo medical examination. Such right to require a physical (or mental) examination, it must be clearly understood, must not be exercised arbitrarily or capriciously, and must be premised on a reasonable belief or substantial evidence, that such an examination is necessary before an employee may be permitted to return to work."

This dispute is particularly difficult because of a lack of evidence and/or transcript. While the Carrier's position is that the Claimant was not "dismissed", rather administratively "disqualified", the Carrier's own Chief Surgeon suggested in his medical report that the Claimant be "dismissed." Furthermore, the roles of the various psychiatrists are clouded and confusing. We find ourselves faced with an incomplete record, the exact reason that this Board requires evidentiary hearings as a rule.

We find that it was not proper to "administratively" remove Claimant from the Seniority Roster. If doubts existed concerning her physical or mental condition she should have been placed in a disability status and so shown on the roster. Accordingly, Claimant must be restored to her seniority roster and shown as on a medical leave. Additionally, we hereby remand this matter for an independent examination by a neutral psychiatrist to determine Claimant's present capabilities to perform her duties as an employee of the Carrier. The cost of the independent examination is to be borne equally by the Claimant and the Carrier. In the event Claimant is found to be able to perform her duties she shall be returned to service. If she is found to be unable to perform her duties she shall be placed in a disability status. (See Award 20548 (Franden) of this Division.) Inasmuch as a legitimate dispute exists concerning Claimant's mental condition the (Carrier shall not be liable for wage losses incurred from the time of her removal from service and the time she makes herself available for further examination as herein ordered.) This examination should be arranged within thirty (30) days of the date of our Order.

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 be remanded to the property.

A W A R D

Claim remanded to the property for handling as indicated in the Opinion and Findings.

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 13th day of May 1983.