

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24925
Docket Number MS-24582

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Steve Lupton
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

"1. Whether the carrier violated Rule 27 and others of the Clerks' Agreement when on July 13, 1979, it withheld claimant from service and failed to hold the investigation within ten (10) days from such date?

2. Whether the disqualification rendered claimant should be removed from his record and he be placed back in carrier service and compensated for all time lost and expenses incurred as a result of the action taken against him?"

OPINION OF BOARD: The Claimant, Steve C. Lupton, was working as a local storekeeper when he was medically withheld from service on July 13, 1979. He had worked for the Carrier since 1968. On August 20, 1979, Carrier notified the Claimant he had been found medically disqualified for service and was advised to attend an investigation to be held on August 28, 1979. By mutual agreement, the hearing was postponed until September 11. On September 12, the Claimant was notified that, as a result of the investigation, he had been found medically disqualified from service as a clerk.

It is contended that Carrier violated Rule 27 when it withheld Claimant from service and failed to hold an investigation within ten days of his being held out of service. Rule 27 provides in part:

"The investigation will be held within ten days from date charged with an offense or held out of service (unless the extension of time is agreed to between the proper officer and local chairman)."

The record establishes the Carrier had a reasonable basis to be concerned with the Claimant's condition and to have him examined. Prior Board awards of the Third Division (21344 and 23042) evidence this Carrier has handled physical disqualifications under Rule 27 of the applicable agreement. This issue was originally raised at the investigation and on the property by the General Chairman. The language of Rule 27 clearly indicates the investigation required is to be within ten days from an employee being held out of service. The actual medical disqualification is a separate issue which may, or in this case, did not coincide with the Claimant being withheld from service.

Our examination of the record requires a finding the Carrier violated Rule 27 by not holding the investigation within prescribed time limits of ten days. We note that Claimant sought treatment of his medical problem and was approved for return to duty on his position of Local Storekeeper on December 15, 1980.

Under all the facts and circumstances involved in this dispute, we believe that Claimant should be made whole for his actual wage loss, if any, during the period July 23, 1979 - August 28, 1979.

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

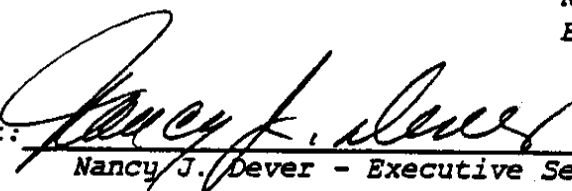
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1984.

