

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26081
Docket Number MW-26413

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation (Amtrak)
Northeast Corridor

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier shall establish a Board of Doctors to examine B&B Welder D. J. Webster in compliance with and as required by Rule 86."

OPINION OF BOARD: The question raised in this dispute turns on the applicability of invoking Rule 86 after a lawsuit, verdict, and Jury Award. Rule 86 provides for a Board of Doctors to reach a final decision concerning the disputed physical fitness of a Claimant.

The Claimant sustained injuries on the job on March 11, 1981, and has not worked since. Claimant sued for injuries and recovered a monetary Jury Award; in so doing, Claimant presented evidence and witnesses to his total and permanent disability from working, and he succeeded with a verdict in his favor.

On February 13, 1984, subsequent to the lawsuit, Claimant placed an unsuccessful request with Carrier that the Board of Doctors be established pursuant to Rule 86 to consider his medical condition for reinstatement.

It would be unfair now to say that Claimant's disability was not finally decided by the Jury Award or that the Award was not accepted, monetarily so, by the Claimant based on his permanent disability from returning to work. There is nothing remaining of the dispute which the Court of Law has not already decided, and nothing remains to be done by way of acting under Rule 86. The Agreement nowhere requires the doing of an unnecessary act.

The Claim will 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 Employes involved in this dispute are respectively Carrier and Employes 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:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1986.