

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26157

Docket Number MW-26493

J. R. Johnson, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company (Southern Region))

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

Welder Helper D. M. Senters shall be returned to his position as welder helper and he shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service beginning February 1, 1984 (System File C-TC-2352/MG-4678)."

OPINION OF BOARD: Claimant was employed by the Carrier as a Welder-Helper. He underwent surgery in March, 1983, for a ruptured disc, and reported for work on February 1, 1984, with a "return to work" authorization, signed by his personal doctor. Claimant was subjected to a return to work physical by Company doctors, who forwarded the results to the Chief Medical Officer. The Carrier's Chief Medical Officer determined that Claimant could only return to duty with a restriction that he not lift, pull or carry more than fifty pounds. Such a condition does not meet Carrier's requirements for a Welder-Helper position. Claimant has been out of service since that time.

The Carrier raises a procedural objection to the handling of this Claim, and asserts that it is barred by the Time Limit Rule of the Agreement. Specifically, it points to the fact the Manager-Engineering Niehaus' letter declining the Claim was dated April 10, 1984, but the General Chairman's appeal to the Senior Manager of Labor Relations was dated June 11, 1984 - more than sixty days from the date of the declination.

The relevant provision of the Agreement, Rule 21 (h), provides in pertinent part, as follows:

"B. If a disallowed claim or grievance is to be appealed, such appeal must be in writing, and must be taken within sixty (60) days from the receipt of notice of disallowance . . ." (Emphasis added)

Exhibit "B" to the Carrier's Ex Parte Submission shows that Mr. Niehaus' letter was received by the Organization on April 13, 1984, and, therefore, the appeal was within the time limits provided in Rule 21 (h) of the Agreement.

The Organization and the Carrier each challenge the propriety of the others' medical statements. The Organization asserts that the Carrier doctor who made the decision was not the same doctor who performed the medical examination of the Claimant. The Carrier argues that the Claimant's doctor merely checked a space on a form which said that Claimant was "able to perform professional duties," with no indication that the doctor considered Claimant fit to perform the strenuous lifting and other physical work required of a Welder-Helper.

This Board has frequently held that it will not substitute its judgment for that of skilled medical doctors, and we will not do so in this case. The Carrier's Chief Medical Officer certainly is competent to rule on the fitness of an individual for a specific position with the Company, and absent a showing that the Claimant's doctor specifically released the Claimant to perform work which required the lifting of more than fifty pounds, there is no real conflict in the medical evidence. However, in view of the time which has elapsed, the Claimant's physical condition may have improved.

Therefore, the Board will award that Carrier provide the Claimant with a new physical examination to determine his current fitness for duty as a Welder-Helper, and, if Claimant successfully passes that examination, the Carrier will reinstate him to service with seniority and other rights unimpaired, but without pay for time held out of service.

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

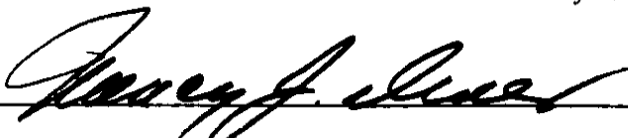
That the Agreement was not violated.

A W A R D

Claim disposed of 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 29th day of September 1986.