

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(L. O. Ferguson  
PARTIES TO DISPUTE: (  
(Norfolk Southern Corporation

STATEMENT OF CLAIM:

"Carrier violated provisions of Rules 3, 5, 9, 10, 13, 14 and 42 of the Employees' Agreement dated June 1, 1982, when it arbitrarily and capriciously denied me the contractual right to return to my former position as tariff clerk at Roanoke, VA after serving discipline. I was held out of service and denied rights to return to my former position (or any other position) beginning March 17, 1986 thru April 22, 1986.

As a result of Carrier's action, it shall be required to compensate me for the dates of April 14, 1986 thru April 20, 1986 at the rate of \$2548.77 per month. Third Division please note that the other days I was held out of service are the subject of other claims and this claim involves ONLY the days of April 14, thru 20, 1986."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant was a clerical employee assigned to the Tariff Bureau. The record indicates that serious problems surfaced and the Carrier questioned Claimant's fitness for duty. The Carrier ordered Claimant for a February 7, 1986, psychiatric evaluation.

An examination of the record indicates that the Claimant protested and obstructed the medical evaluation. The evaluation was finally concluded on March 25, 1986, with the evaluation stating that Claimant should not remain in "...his present department where the situation sounds beyond repair." Based on the medical evaluation, Claimant was notified on April 10, 1986, that he was to return to work effective April 14, 1986, but not in the Tariff

Bureau. The Organization and Claimant disagreed with the medical disqualification which restricted Claimant's employment. The issue in this case is whether the Carrier violated the Agreement when it denied the Claimant his rights to return to his previous position from April 14 through April 20, 1986.

This Board after a thorough review of the controlling Agreement and record as handled on the property, finds that the Carrier has not violated any provision of the Agreement. In the instant circumstances there is sufficient probative evidence of Claimant's behavior to justify Carrier's action in withholding Claimant pending a psychiatric evaluation. Given the results of the evaluation, Carrier's restriction disqualifying Claimant from returning to the Tariff Bureau was fully supported and justified. While the Claim dates are disputed on several grounds, the Board must deny the Claim due to Claimant's own inaction. After notification by the Carrier of his right to exercise his displacement rights to another department, Claimant chose not to return to work from April 10, 1986 through April 20, 1986. The Board also notes that the Tariff Clerk position was abolished shortly thereafter rendering the long term issue moot in any event.

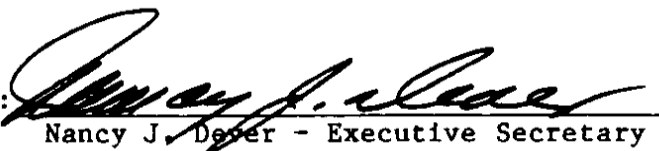
For the above stated reasons, the Board finds no merit to the Claim presented before it. The Carrier has the right to determine medical fitness for duty to assure the safety of the workplace. Based upon the evidence in this record, Carrier's action was responsible, proper, lenient and violated no provisions of the Agreement. The Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.