

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31807
Docket No. MW-32412
96-3-95-3-291**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier withheld Machine Operator J. Burns from service beginning February 10 through March 11, 1993 [System File 20(26)(93)/12(93-295) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. Burns shall be allowed eight (8) hours' pay at the applicable machine operator's straight time rate for each workday beginning February 10 through March 11, 1993."**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

In January 1993, Claimant was examined by Carrier's pulmonary consultant and was returned to work. On February 5, 1993, however, Carrier advised Claimant that he had been found medically unqualified. Claimant was removed from service effective February 11, 1993. Claimant wrote Carrier a letter challenging his disqualification. He was given a second pulmonary examination on March 4 and was restored to service on March 11, 1993.

Carrier contends that it exercised its right to require reasonable medical qualifications. Carrier maintains that in the first pulmonary test, Claimant failed to complete all of the required tasks. Consequently, Carrier argues, it acted reasonably in disqualifying Claimant from service.

The Organization contends that Claimant performed every task required by Carrier's pulmonary consultant and was then returned to duty. The Organization argues that there was no basis for Carrier's decision to remove Claimant from service.

The Board examined the record carefully. We recognize that Carrier has the right to impose reasonable medical qualifications on its employees. It also has the right and the responsibility to disqualify employees where there is reason to believe that they do not meet reasonable medical qualifications.

Carrier's rights are not at issue in the instant case. The only evidence in the record consists of Claimant's written statement which attests that he performed all tasks required by Carrier's pulmonary consultant. The consultant's report is not in evidence. Under these circumstances, we must conclude that there is no evidence supporting Carrier's removal of Claimant from service and we must sustain the claim.

It has been argued that Claimant's written statement was not submitted during handling on the property. Indeed, the Organization's correspondence does not refer directly to the statement or indicate anywhere that it is enclosed with the processing of the claim. However, Carrier, in its Submission, admits that the written statement was in issue during handling on the property. Specifically, at Page 2 of its Submission, Carrier writes:

"[O]n February 24, 1993, claimant wrote Carrier's Medical Department alleging he performed all of the tests given him by Dr. Bass and was told by Dr. Bass that he was acceptable. Claimant also alleged he could not understand why he was taken out of service and wanted to know why it was taking so long to return him to work."

Thus, it is apparent that Claimant's statement was part of the record developed on the property.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.