

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33405
Docket No. CL-34245
99-3-97-3-796

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11880) that:

(a) The Carrier violated the Agreement when it refused to establish a Board of Physicians, in accordance with Rule 8-D-1 of the Agreement dated July 27, 1996, to determine the physical condition of clerical employee Arnie Calvert.

(b) Such Board now be established. Should Claimant's position be supported by the Board, a review of Claimant's earnings for the period Carrier refused to accede to this request be made against that which he might have earned had the earlier examination been requested. Carrier will be liable for any lesser income which obtained.”

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.

The Board has carefully reviewed the record in this case. Claimant was denied an attempt to bid into a tractor position requiring heavy lifting and involving considerable jostling of his body. He then filed the instant claim. Some time before bidding on that job, during a case heard in Federal Court under FELA, Claimant testified under oath that he was unable to lift more than thirty-five (35) pounds because of a disability. Moreover, three months before he bid on the position at issue, his own physician stated that Claimant could never work as a baggage man, could not lift more than twenty-five (25) pounds, and could not be subject to "bouncing or irregularity."

Between that testimony and the filing of the claim before this Board, Claimant presented no evidence of having been rehabilitated. Accordingly, Carrier was under no obligation to disregard its own medical officer and Claimant's personal physician and establish a Board of Physicians.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 13th day of July 1999.