

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36117
Docket No. MW-34463
02-3-98-3-91

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former St. Louis
(Southwestern Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow Mr. G. E. Tackett to displace junior Mechanic H. L. Knighton on System Tie Gang T-2 on November 7, 1996 (System File MW-97-18-CB/1044299).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. G. E. Tackett shall be compensated at the appropriate mechanic's rate of pay for all wage loss suffered beginning November 7, 1996 and continuing until the violation ceases and he shall receive proper credit for such compensation for benefits and vacation purposes.”

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.

According to the record, the Claimant has suffered from narcolepsy for many years prior to the claim dates. This caused him to momentarily fall asleep whenever he was relatively motionless, such as when driving company vehicles as well as his personal vehicle. Fortunately, these brief losses of consciousness while driving had not resulted in any crashes, but there were near misses. Because of this problem, the Claimant had

been working in positions that did not require him to drive. However, his most recent position of Mechanic Foreman at the Carrier's Pine Bluff Yard was abolished in late 1996.

On November 7, 1996, the Claimant sought to displace a junior employee working in a Mechanic position on System Tie Gang T-2. The Carrier refused to allow the Claimant to do so because the tie gang position required the incumbent to drive a company vehicle and have DOT licensing certification. At the time, the record establishes that the Claimant's medical restrictions, among other things, precluded him from driving company vehicles.

The claim herein was filed January 3, 1997 and challenged the Carrier's refusal to allow the Claimant to displace the junior employee. The record shows that the Claimant also retained private counsel in the same time frame to pursue his rights with the Equal Employment Opportunity Commission under the Americans with Disabilities Act, whatever those rights might be. It is well settled that the authority of the Board is limited to interpreting and applying Agreements between carriers and their employees; that authority does not extend to the enforcement of state or federal statutes. See Second Division Award 13090 and Third Division Award 32376. Consequently, we do not address herein any statutory issues in any manner whatsoever.

After November 7, 1996, there was considerable correspondence relating to the nature of the Claimant's medical restrictions and the treatment of his narcolepsy. Although the Organization questioned whether the Claimant had had any recent narcoleptic episodes, entries in his medical records dated October 7 and 14, 1996 reflect that he did. Other restrictions relating to working at elevation, near heavy moving equipment, and near open pits were removed shortly after Ritalin therapy was begun through the Claimant's neurologist. And although the neurologist saw no reason why the Claimant could not drive company vehicles, it is undisputed that Sub-Part E of the DOT regulations (49 CFR 391.41(a)(8)) remained a barrier to persons with a history of a condition likely to cause loss of consciousness.

The Carrier did not deny the Claimant the ability to return to work in a non-driving position. Indeed, it scheduled him for a return-to-work physical examination by letter dated July 16, 1997. Nonetheless, the claim focuses on the Claimant's ability to displace onto the tie gang position that required driving company vehicles.

It is well settled that carriers have the right to remove employees from active service in the presence of genuine concerns about an employee's physical/medical fitness for duty. See, for example, Third Division Awards 25013 and 32778 and Second Division Award 13070. It follows that this right includes the right to restrict bidding and/or displacement rights into positions that would involve such fitness concerns.

The Organization also took exception to the fact that the Carrier refused to allow the Claimant's desired displacement without actually examining him. The Board, however, has held that such an exam is not required. A carrier need only prove that it acted reasonably and not arbitrarily, discriminatorily, or in bad faith. See Second Division Award 13090 and Awards cited therein. The medical records in evidence here provided the Carrier with a proper basis for its action.

The Organization also questioned the driving requirement imposed upon the tie gang position that the Claimant sought to displace. According to its assertion, nothing in the Agreement granted the Carrier the permission to attach such a requirement to the position. But the right of carriers to determine reasonable qualifications and performance standards for positions, unless limited by explicit Agreement language, is so well-settled that citation to authority is not necessary. No such restrictive Agreement language has been cited here. Moreover, nothing on this record provides us with a proper basis for concluding that the requirement to drive company vehicles was unreasonable.

Given the state of this record, we do not find the Carrier's action to have violated the Agreement.

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 22nd day of July 2002.