

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36771
Docket No. CL-37149
03-3-02-3-134

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12802)
that:

1. Carrier violated the Agreement specifically Rules 8, 22 among other rules of the Agreement when on November 21, 2000 it failed or refused to allow Claimant, Ms. Patty Dunn to exercise her displacement rights over junior clerk, Ms. T. Miller and refused to allow her to take ‘return to work’ physical based on the fact that her typing test was over three (3) years old.
2. Carrier shall now compensate Claimant an amount equal to what she would have earned on the position of Statistical Clerk, effective from the time of her original displacement until such time as she is given the assignment.”

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.

Ms. Patty Dunn, the Claimant, suffered an on-duty neck and upper-back injury as an Auto Train Representative in October 1991. She was out of service due to the injury from October 1991 until May 1996. On May 3, 1996, the Claimant returned to duty on a temporary assignment as a Special Duty Safety Coordinator. This return to duty was under restricted conditions resulting from physical limitations imposed by her doctor's release to return to work. The Safety Coordinator's position was abolished in July 1998. The Claimant was medically disqualified, because no light duty work was available. On November 17, 2000, the Claimant submitted a medical release from her Chiropractor stating that she could return to work, but with restrictions: no lifting over 35 pounds, no continuous bending, no heavy pushing and pulling. Based on this medical release, the Claimant attempted to displace onto a Statistical Clerk position, but was notified her displacement would not be accepted until she was released from her doctor's care as being fully recovered. Between November 17, 2000, and July 20, 2001, considerable activity concerning the Claimant's ability to meet the physical requirements of a Clerk's position took place. The Claimant obtained a number of updated medical statements from her doctor, as well as from the Carrier's Medical Department. The medical restrictions the Claimant had been under were gradually lifted so she met the specified job standard. On July 12, 2001, she took a return-to-duty physical. She was approved to return to work and displaced on a Clerk's assignment on July 20, 2001.

On January 2, 2001, the Organization filed the instant claim. The claim was denied at all levels and has been progressed to the Board for final adjudication.

The Organization in this instance seeks compensation for the Claimant from the point she attempted to displace onto a Statistical Clerk's position in November 2000 until she was finally placed on a job on July 20, 2001. The Organization contends that Carrier officials in Sanford, Florida, where the Claimant attempted to displace to a job, were obstructionist and viewed her attempt to displace a Statistical Clerk at Sanford in a negative fashion. They insisted that the Claimant have an up-

to-date typing test on record and that she should meet all of the physical requirements of the job with no leeway. The Organization argued that this strict adherence to Carrier Rules was not always adhered to and very often the Carrier worked with employees who needed some consideration on the job.

The Carrier, on the other hand, consistently maintained that until the Claimant met the physical requirements of the job, she could not be allowed to displace on it. When the Claimant's restrictions were modified by her doctor to the point that she met the requirements of the job she sought, she was given a return-to-work examination and within a week placed on a job.

The Board reviewed the record and studied the many letters and documents contained in the record. As a result of that study and review, the Board has concluded that the Carrier did not act in an arbitrary or capricious manner in this instance. The Carrier has the right, if not the obligation, to set reasonable standards that an employee must meet to be placed on a job. In the instant case, the Board finds no basis for modifying in any way the Carrier's actions. When it was demonstrated by the Claimant and supported by her doctor's statements and the return-to-work physical that the Claimant could fulfill all requirements of the job she sought, she was placed on it. The Carrier was not required to do more in this instance.

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 29th day of December 2003.