

PUBLIC LAW BOARD NO. 2035

Parties: Brotherhood of Railway and Airline Clerks  
and  
CONRAIL (Former Penn Central Transportation Co.)

Statement of Claim: "Claim of System Committee ... that:

- (a) Carrier violated Rules Agreement when on June 2, 1974, Mr. L. N. Huffman was removed from Carrier's service and held from his assignment, Job Number 222 at Sharonsville, Ohio.
- (b) Carrier further violated the Rules Agreement in refusing to handle the matter under Rule 8-D-1 of the Agreement as requested by the Division Chairman.
- (c) L. N. Huffman shall be paid for all wage loss beginning on June 2, 1977 and continuing until he is returned to his assignment."

Discussion: The Claimant with a seniority date of 1941 was working as a Yard Clerk at Sharon Yard, Cincinnati, Ohio, in May 1968 when he suffered a heart attack. He was absent from duty due to his illness from May 31, 1968 to May 27, 1970, when he returned to work.

From May 1970 to May 1972, the Claimant was absent due to illness 115 work days. Because of this absenteeism, the Carrier requested the Claimant to report to a Carrier physician for a medical examination. On June 2, 1972, Dr. Manley, a Carrier doctor, examined the Claimant and found he was  $31\frac{1}{2}$  pounds over the Company's maximum weight for a man of his height and that his blood pressure was 164/96, also above Company standards. As a result of this examination, the Claimant was found physically unqualified for service.

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On July 6, 1972, the Organization wrote the Carrier to join with it in establishing a Board of Physicians to settle the instant dispute. Rule 8-D-1 states

"(a) When an employee has been removed from service account of an examination made by a Company physician, the employee may request, individually or through his Division Chairman, that the question of his physical fitness to continue in his present occupation be finally decided before he is permanently removed therefrom."

On July 12, 1972, the Carrier rejected the Organization's request to set up a three doctor board on the grounds that this was not a dispute referable to a doctor board because the Board would not have the authority to change the Carrier's Medical Standards.

On July 17, 1972, the Organization filed a claim for lost earnings on behalf of the Claimant. The Carrier denied this claim.

On January 26, 1973, the Claimant was again examined by Dr. Manley. His examination revealed that the Claimant had lost 19 pounds and his blood pressure had improved. The Claimant also presented a certificate from his personal physician, Dr. Test, which stated that the Claimant had been under his care for obesity and high blood pressure. Dr. Manley approved the return of the Claimant to duty as of January 27, 1973.

The claim is therefore for back pay from June 21, 1972 to January 21, 1973.

#### Carrier's Position

The Carrier stated it was justified in removing the Claimant from service on the basis of competent medical authority. At no time during the handling of the case was the Claimant's physical condition

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as reported both by his personal physician and the Carrier's doctor, disputed by the Organization. The only basis for the claim was that the Claimant was physically fit when he was removed from service on June 3, 1972 and the Organization's questioning of the Carrier's right to set reasonable medical standards. The Carrier alluded to a letter from Dr. Schmidt, a specialist who treated the Claimant and who stated the Claimant had exogenous obesity and hypertension, both of which were under treatment. This information does not suggest the Claimant was physically fit. This diagnosis was what led Dr. Manley to conclude that the Claimant was not fit for duty when he exceeded the Carrier's standards on weight and blood pressure.

The Carrier noted that it alone is responsible for maintaining the safe and efficient operation of its facilities. It, therefore, had the right to require employees to meet reasonable standards of physical fitness. The standards which the Carrier adopted are the product of years of experience in dealing with the many hazards of this Industry. There is no showing that the Carrier acted capriciously or in bad faith in this case.

The Carrier stressed that if a Board of Physicians had been appointed in July 1972, all that it could have determined was that the Claimant was suffering from obesity and hypertension. But such a Board could not have set aside the Carrier's Medical Standards.

#### Organization's Position

The Organization stated the Carrier violated Rule 8-D-1 when it refused its request to have a Board of Doctors determine the Claimant's fitness and ability. Rule 8-D-1 gives the Claimant, upon

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request, the right to have his physical fitness determined by a Board of Physicians. The Claimant is not required to show cause or evidence in support of his request. Nor does the Carrier have the option to refuse such a request. The Organization stated that the Carrier's right to set medical standards is not questioned, but Rule 8-D-1 does give the employee the right to question the reasonableness of such medical standards, particularly in their application to his individual case. The Organization further noted that the Claimant was disqualified initially for being overweight, and there was no mention of high blood pressure in the June 1972 service disqualification. Furthermore, the Organization stressed that the Carrier's medical standards are not inflexible, and that when the Carrier qualified the Claimant for service on January 1973 he had only lost 19 of the  $31\frac{1}{2}$  pounds of his excess weight.

The Organization stated that when the Carrier agreed to Rule 8-D-1, it made its findings on physical fitness open to dispute and agreed to a definite procedure for a determination by a Board of Physicians upon request by an employee or his representative. Under the facts of this case, the Claimant was improperly removed from service, and is therefore entitled to receive back pay from June 2, 1972 to January 27, 1973.

Findings: The Board, upon the whole record and all the evidence, finds that the employee and Carrier are Employee and Carrier within the meaning of the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given due notice of the hearing thereon.

While the Board finds this to be a close case, it finds that the Carrier was entitled to hold that a Medical Board under Rule 8-D-1

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was not the proper procedure under the facts of this case. The Carrier was entitled to maintain that it had the right to establish certain standards of weight and blood pressure. What was at issue was whether a Board of Physicians could determine whether these medical standards were valid. Rule 8-D-1 properly comes into being when there is a dispute as to whether a man's physical condition permits him to return to duty. If, for example, Dr. Manley had determined that the Claimant was not entitled to return to service because he was still subject to a cardiac condition and it was unsafe to permit him to return to work, then the determination of the Claimant's overall ability to perform his duties would have been the proper subject of determination by an 8-D-1 Board of Doctors.

However, in the instant case, Dr. Manley disqualified the Claimant because he did not meet the Carrier's predetermined standards of blood pressure and weight. These were standards which the Carrier could promulgate unilaterally unless they were unreasonable and arbitrary on their face - and the record contains no such allegation. This Board does not believe a panel of doctors is empowered to overrule Carrier established medical standards reasonable on their face.

The matter of established medical standards is a matter that the Carrier could control, and it could waive them if it elected, provided it did not do so in a discriminatory manner. The Carrier's refusal to submit the establishment of medical standards, is not a breach of Rule 8-D-1.

The Board finds the Carrier's application of its weight and blood pressure requirements to an employee with the Claimant's

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medical history was not arbitrary or unreasonable to adopt the position that it was not contractually obligated to submit its medical standards to third party review.

Award:                      Claim denied.

Jacob Seidenberg  
Jacob Seidenberg, Chairman and Neutral Member

N. M. Berner  
N. M. Berner, Carrier Member

F. T. Lynah  
F. T. Lynah, Employee Member

July 29, 1978