

BEFORE PUBLIC LAW BOARD NO. 1837
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 73

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood

1. The Carrier violated the Agreement when it rejected Trackman T. R. Blanton's employment application and summarily withheld him from service without the benefit of an investigation. (File MW-TIP-76-7)

2. Claimant T. R. Blanton shall be returned to service with seniority and all other rights unimpaired and compensated for all wage loss suffered commencing October 21, 1976.

FINDINGS:

Claimant T. R. Blanton was employed by the Carrier as a trackman and entered service on May 12, 1976.

On November 22, 1976, the Organization notified the Carrier that it had violated Rules 1 (A) and 22 of the agreement, stating that the Carrier dismissed Claimant Blanton without the benefit of a fair and impartial investigation. On August 2, 1976, the Claimant filed an application for employment in the capacity of laborer. On October 21, 1976, the Carrier notified the Claimant that his application had been rejected and was dismissed. The Organization asserts that, under the rules, the Carrier had thirty (30) days from the date an employee first entered service in which to reject his/her application for employment. Failure to do so disallows the Carrier to discipline or dismiss the

employee without the benefit of an investigation. On December 21, 1976, the Carrier denied the Organization's claim. On March 29, 1977, the Carrier clarified its position stating that the Claimant was not dismissed, but was medically disqualified, therefore retaining his employment relationship and having the ability to return to service once he was medically qualified to do so. The Organization did not accept this position, and this matter came before this Board.

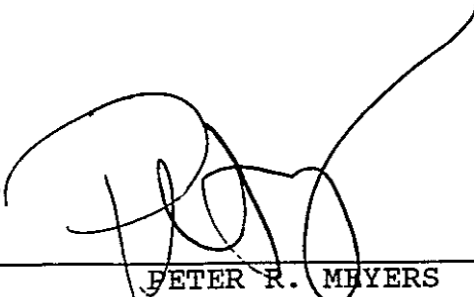
This Board has reviewed the record in this case, and we must find that the Claimant was medically disqualified from his position of laborer in 1976 due to back problems. The decision to disqualify the Claimant was a medical decision, and this Board finds that the Carrier has a right to set reasonable medical standards for employees. At that time, the Carrier had x-rays and other medical evidence that the Claimant would not be able to satisfactorily perform his duties. The record does not reveal any other medical findings that are different from the Carrier's. Even if it did, the parties have an agreement as to what steps must be taken if an employee desires to challenge a medical disqualification. Those steps were not taken.

This case is not a discipline case, and no discipline rule has been violated. Therefore, this Board can do nothing other than to deny the claim.

AND 73-1837

AWARD:

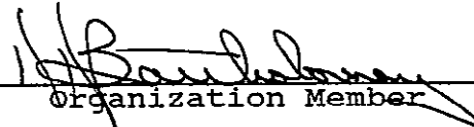
Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: April 29, 1991