

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 196
Case No. 283

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
St. Louis, Southwestern Railway Company

STATEMENT
OF CLAIM

"Claim of the System Committee that:

1. Carrier violated the effective agreement when Trackman George R. Davidson's return-to-work application was erroneously disapproved.
2. Claimant Davidson shall be reinstated to service with all seniority rights unimpaired and paid for all lost wages."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that claimant was hired by the Carrier on April 1, 1981, and worked until furloughed on December 11, 1981. He was later recalled to service and took his return-to-work physical for that recall on July 21, 1983. As a result of Carrier's Medical Department's determination, claimant failed to meet the required physical standards and was not permitted to return to work. The record indicates further that claimant, not being satisfied with the medical findings of the physician to whom he had been sent by Carrier, sought a second opinion. That second opinion resulted in a report indicating that he had a normal spine, contrary to the first physician's findings.

Petitioner insisted that claimant was qualified to return to work based on the second physician's findings. Carrier, on the other hand, insisted that there was no such evidence which it need accept since its physician had determined he was not qualified to return to work. The Organization belatedly asked for a three-

doctor panel to make the ultimate determination.

The record indicates that there was no provision in the agreement which permits a third party neutral doctor to make any determinations which would be material to the circumstances in this dispute. Furthermore, there is no doubt but that Carrier has the right, well established, to set physical standards for its employees. It is this Board's view, however, that in order to provide an equitable solution for all concerned, that Carrier take steps to resolve the matter in the following fashion. Carrier is required to make sure that the claimant is re-examined by a different physician designated by Carrier and, if that re-evaluation indicates that claimant has no problems which would make him unqualified under its standards, Carrier shall return him to work. Thus, the decision will be left in the hands of the physician designated by Carrier for the re-evaluation. Of course, no compensation for back pay is contemplated. The Board believes that this solution to the problem is one which would satisfy reasonable expectations of all concerned.

AWARD


Claim sustained in part; Carrier will accord claimant another medical evaluation as indicated above.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman


M. A. Christie, Employee Member
R. O. Naylor, Carrier Member

Houston, Texas
January 14, 1985