

SPECIAL BOARD OF ADJUSTMENT NO. 1049

Award NO. 46

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim filed on behalf of Mr. J. B. King as a result of the Carrier's refusal to grant a return-to-work physical.
[Carrier file MD-5 King, J.B.]

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

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant is estopped from returning to work for Carrier after representing in a court of law that he was disabled and would never be able to again work as a track laborer. The courts, the NRAB and SBA's and PLB's have long been committed to the notion that a carrier is under no obligation to return an employee to service in such circumstances. See 2NRAB 1672 (Carter), 3NRAB29408 (Wesman), 3NRAB26366 (Cloney), 6PLB3991 (Gold) as well as Lewandowski v. Natl. RR Pass Corp, 3rd CA NO. 89-1293 (1989) and the cases cited therein. The Claim is denied.

John C. Fletcher

Richard A. Lau I dissent
Richard A. Lau
Organization Member

E. N. Jacobs, Jr.
E. N. Jacobs, Jr.
Carrier Member

Issued at Norfolk, Virginia on August 30, 1993