

SPECIAL BOARD OF ADJUSTMENT NO. 171

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

vs

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

The particular claim in dispute is identified by the parties as follows:

"Claim of George Kelley, freight handler at St. Paul Freight, account disapproved for freight handler work on April 16, 1956, Organization file 1920, Carrier file C-43-2-58."

The claimant is a freight handler who had been disapproved by the Carrier's chief surgeon for work which involved heavy lifting while convalescing from surgery performed on his back. During this period he was permitted to work as a messenger and as a clerk. This claim seeks the difference, if any, between the freight handler's rate and the earnings the claimant actually received while he was so disqualified.

FINDINGS: This Special Board of Adjustment upon the whole record and all the evidence, finds that:

The claimant was a Freight Handler who suffered an injury to his back while in the employ of the Carrier. The Claimant was granted a five (5) month leave of absence and advised the Carrier that his personal physician, Dr. D. L. McCain, was planning to operate on his back.

On June 6, 1955 the claimant was operated upon by Dr. D. L. McCain. Three months later, the claimant asked the Carrier to return to service and the Carrier informed him that it would be necessary to submit to a physical examination by the Carrier's physician. On September 19, 1955 he was examined by the Carrier's chief surgeon, Dr. R. C. Webb. Pending the outcome of the physical examination by Carrier's Dr. Webb, the claimant was permitted to work as a Messenger. The claimant was also asked by Carrier's Dr. Webb to obtain a medical report from Dr. McCain. Dr. McCain reported that the claimant was totally disabled, but that he could return and perform light work.

The Carrier's Dr. Webb, after the examination, did not approve the claimant's return to work until well enough to perform the duties of a Freight Handler. However, at a later date the Carrier's Dr. Webb reviewed the case and found that the claimant could work as a Clerk or Messenger if able to perform duties satisfactory to superior officers.

On April 16, 1956, the Carrier posted a position known as Freight Handler at the St. Paul Freight Station--this was Bulletin No. 11. The claimant made application in writing for this position. He had a seniority date of March 23, 1953. On April 20, 1956, the Carrier issued an assignment, Bulletin No. 16, and awarded position listed in Bulletin No. 11 to employee Charles Sarro, who had a seniority date of September 15, 1955. The claimant protested the assignment Bulletin through his Local Chairman.

The claimant, through his organization, asked for a hearing under Rule 12, paragraph C of the Effective Agreement which entitled him to an investigation to show why he was disqualified for the position posted April 16, 1956, Bulletin No. 11. The Carrier granted him a hearing under Rule 12, Paragraph C. The hearing was held on August 6, 1956.

The Board finds that on April 20, 1956 when the Carrier issued an assignment Bulletin No. 16 and awarded the posted position in Bulletin No. 11 to employee Charles Sarro, it did not violate any rights of this claimant under the Effective Agreement. The claimant was notified on October 26, 1955 by the Chief Surgeon of the Carrier who had consulted with the claimant's surgeon, that this claimant was approved for work as a Clerk or Messenger if able to perform duties satisfactory to superior officers.

The claimant did not furnish the Carrier with a statement from his personal physician, Dr. McCain that he was physically fit to perform the work of a Freight Handler on April 16, 1956 or on April 20, 1956.

Later this claimant was examined by his personal physician, Dr. McCain, by the Carrier's physician and by a third physician, Dr. Cole, and on December 17, 1956, the Carrier notified this employee that he was now physically fit to perform the work of a Freight Handler.

Because the Carrier was not furnished with any Doctor's Certificate by the claimant that he was physically fit to perform work as a Freight Handler in April of 1956, and due to the fact that the Carrier's physician had restricted this claimant in October of 1955 to the work of a Messenger or Clerk, the Carrier did not violate any provision of the Agreement when it refused the claimant's bid for a job of Freight Handler on April 16, 1956 and awarded the position to a junior employee.

A W A R D

Claim denied.

/s/ Thomas C. Begley
Thomas C. Begley, Chairman

/s/ C. A. Pearson
C. A. Pearson, Carrier Member

/s/ C. C. Denewith,
C. C. Denewith, Employee Member

Signed at St. Paul, Minnesota this 10 day of December, 1958.