

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 190
Case No. 277

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 R. L. Koss was unjustly disqualified on his return-to-work physical.
2. Claimant Koss shall now be reinstated to service with all rights unimpaired, and paid for all wages beginning sixty days retroactive from September 7, 1983."

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 claimant was hired by Carrier and started to work on October 28, 1980. Prior to being hired he took a physical examination at Carrier's request and worked following his employment continuously through April of 1982 at which time he was furloughed. The claimant was recalled from furlough in May of 1983 and was requested, as is Carrier's practice, to take a return-to-work physical examination. He was examined by a Dr. Johnson on May 6, 1983, and was notified that he did not meet the physical requirements for the job of track laborer by Carrier's physician.

It is undisputed that claimant had a back problem. That problem, however, was identical, according to the evidence, at the time of his original employment and at the time of his return-to-work physical, some three years later. Petitioner insists that there was no deterioration of claimant's physical condition during the three-year period and there is no reasonable explanation as to why Carrier disqualified claimant on medical grounds. It is alleged that this decision is arbitrary, capricious and unreasonable. Carrier, on the other hand, insists that its decision by its Chief Medical Officer in rejecting claimant based on his return-to-work

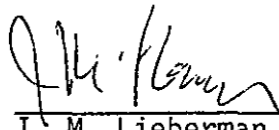
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physical was appropriate and within its rights. It is argued that Carrier has the right to set physical standards for its employees and further to accept the recommendation of its Chief Medical Officer.

There has been a long history of decisions in this industry which indicate that Carriers have the right to determine the physical fitness of their employees (see, among many others, Third Division NRAB Award No. 15367). In this instance, even though the physical condition of the claimant may not have changed during the period from his original employment, Carrier had the right to establish standards of physical fitness for the particular job and the medical determination cannot be considered to be arbitrary or improper. Thus, there is no basis for this claim and it must be denied.

AWARD

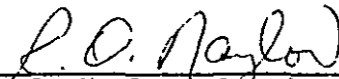
Claim denied.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member



R. O. Naylor, Carrier Member

Houston, Texas

January 14, 1985