

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
Award No. 130
Docket No. 135

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO :
DISPUTE: CHICAGO & NORTH WESTERN TRANSPORTATION CO.

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

1. The medical disqualification of Trackman R. G. Paulson was without just and sufficient cause. (Organization File 35W-1162; Carrier File 81-87-6).
2. Trackman R. G. Paulson shall be compensated for all wage loss suffered in addition to any seniority he may have gained while improperly held out of service.

FINDINGS:

Claimant R. G. Paulson was employed as a trackman by Carrier. When Claimant was recalled to service in April, 1986, he was required to undergo a physical exam which included a drug and alcohol screening and as a result the Claimant was withheld from service between April and August of 1986. On September 1, 1986, Claimant requested a hearing which was held on September 10, 1986, and Claimant was advised that the hearing:

"revealed no unjust treatment of you by the Management of the Eastern Division Engineering Department or the Medical Department of the Chicago & North Western Transportation Company."

The Organization asserts that the Carrier improperly removed the Claimant from service and filed this claim for all time lost.

This Board has reviewed the record in this case and we find that Rule 56 contains specific procedures which an employee must follow if he disagrees with the Carrier's decision to disqualify him on the grounds of a physical examination.

Rule 56 states:

"RULE 56 - PHYSICAL EXAMINATIONS . . .

If an employe should be disqualified upon examination by the Company's physician and he feels that such disqualification is not warranted, the matter may be handled directly with the Director of Labor Relations (Non-Operating). If the matter is not disposed of by such handling, the following will apply:

- (a) The employe involved, or his representative, will select a physician to represent him and the Company will select a physician to represent it in conducting a further physical examination. If the two physicians thus selected shall agree, the conclusions reached by them will be final.
- (b) If the two physicians selected in accordance with paragraph (a) should disagree as to the physical condition of such employe, they will select a third physician, to be agreed upon by them, who shall be a practitioner of recognized standing in the medical profession and a specialist in the disease or diseases from which the employe is alleged to be suffering. The Board of Medical Examiners thus selected will examine the employe and render a report within a reasonable time, not exceeding fifteen (15) calendar days after selection, setting forth his physical condition and their opinion as to his fitness to continue service in his regular employment, which will be accepted as final. . .

Consequently, according to Rule 56, if an employee is disqualified upon examination by the Company's physician, he may select a physician to represent him and that physician will perform a second physical examination. The Carrier can select another physician and if there is a disagreement between the doctors as to the physical condition of the employee, a third physician is selected. That clear cut procedure which is spelled out in detail in Rule 56 was not invoked by the Claimant in this case after the Carrier physician found him to be not qualified to return to work.

The Claimant argues that he was wrongfully withheld from service

because he was not suffering from the problems diagnosed by the Carrier's medical staff. However, once that disqualification has been done, the burden shifts to the Claimant to assert his rights pursuant to Rule 56. The Claimant did not properly exercise his rights in this case and therefore the claim must be denied. Rule 56 governs this situation and the Claimant has ignored the rule.

AWARD

Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: NOV 28 1989