

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20652
Docket Number NW-20764

Francis X. Quinn, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Norfolk and Western **Railway Company**)

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

(1) The Carrier violated the Agreement when it failed, within the thirty (30) day time limit as provided therein, to take action upon the application of **Trackman** Charles E. Russell and thereafter, without affording him the benefit of other rules thereunder, arbitrarily removed and dismissed him from **all** service. (System File **MW-CTM-72-3**)

(2) Charles E. **Russell** now be restored to service with all seniority and vacation rights unimpaired and he be made whole for all wage loss suffered since August 18, 1972.

OPINION OF BOARD: The Carrier has the right to determine whether or not its employees are physically capable of performing their duties and to remove them from service when it is determined that they are not so capable.

In the instant case, the parties have agreed to an established procedural remedy in the form of medical arbitration and the claimant failed to avail himself of that remedy. Therefore, we will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this **21st** day of March 1975.