

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22553  
Docket Number CL-22520

Paul c. Carter, Referee

(Brotherhood of Railway, Airline and  
( **Steamship** Clerks, Freight Rhandlers,  
( **Express** and Station **Employes**

PARTIES TO DISPUTE: (

(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8527) that:

(a) Carrier violated the Agreement at Charlotte, North Carolina, when it disqualified Mr. R. G. Register, Clerk, effective January 23, 1976, for alleged physical reasons, and refused to agree to a neutral doctor to resolve the issue.

(b) Carrier shall be required to restore Mr. R. G. Register to the service of the Carrier and compensate him for all **time** lost, beginning January 23, 1976, and continuing until he **is** restored.

OPINION OF BOARD: Following an absence from Carrier's service of about two and one-half years, claimant was required to undergo a physical examination and, on Way 19, 1975, was approved to return to work **as** an outside yard clerk at Charlotte, North Carolina. While claimant met Carrier's **minimum** physical standards when examined, the examining physician detected early indication of cardiac deficiencies, and the Carrier's Chief Surgeon determined it necessary that claimant be re-examined in six **months**.

On December 23, 1975, claimant was re-examined by Carrier's physician at Charlotte, North Carolina, who found that claimant's cardiac condition had deteriorated; that he had early signs of congestive heart failure and was found to have "mitral **regurgitation**, mitral insufficiency secondary to papillary muscle dysfunction and premature ventricular contractions." **As** a result of this examination, the Carrier's physician determined that claimant did not **meet** the Carrier's physical standards for his position, specifically that **no employe will be** permitted to remain in service if he has "**a** history of clinical diagnosis of a condition or disease known to lead to **syncope, dyspnea**, collapse or congestive heart failure."

Claimant was sent to the **Sanger** Clinic in Charlotte for a full evaluation of his heart condition. On February 4, 1976, Dr. Norris **Harbold**, of the Sanger Clinic, confirmed the Carrier's physician's earlier findings, and added **that** in his opinion claimant would be a candidate for open heart surgery in the near future. With this information, the Carrier's Chief Surgeon disqualified **claimant** from continuing service as a yard clerk.

The Board agrees that the Carrier alone has the duty and the right to set and **enforce** medical standards for its employes. This is evidenced by the Federal Employers Liability Act, and the many court decisions cited in the record before the Board. In the exercise of that right the Carrier's **minimum** medical standards include:

"no history or clinical diagnosis of a condition or disease known to lead to syncope, **dyspnea**, collapse or congestive heart failure."

The governing collective bargaining Agreement does not diminish the Carrier's right to determine medical qualification of clerks. There has, however, **been an understanding** between the Organization **and the Carrier over many** years that adjudication of a medical dispute by a neutral doctor will be provided when "the findings of the employee's doctor conflict with those of the Carrier's doctor.." This understanding only subjects the disputed medical **condition of** a disqualified **employee** to neutral determination. It does not require the adjudication of the validity of the standards which the Carrier has the right to determine.

The record before the Board does not contain evidence of a conflict in findings between claimant's physician and Carrier's physician. There is, therefore, no proper basis for the Organization's contention that the Carrier violated the **Agreement** when it refused to agree to a neutral doctor to resolve the issue of claimant's disqualification. There is, likewise, no basis for the claim for compensation for time lost by claimant while out of service. X-1

The record does show that in November, 1978, the Carrier received information that claimant had undergone open heart surgery to replace his mitral **valve**. He **subsequently** underwent a **return** to work **physical** examination, in which **his** condition was **found** to **conform to** Carrier's **minimum medical** standards **and he was** approved

to return to service, and was **so** notified **on** January 18, 1979. He actually returned to active service January **31**, 1979. This later development, of course, has no bearing **on** the claim before the **Board**, which, for the reasons previously stated, **must** be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record **and** all the evidence, finds and holds:

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** 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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of **Third Division**

ATTEST:

  
**Executive Secretary**

Dated at Chicago, Illinois, this **16th** day of October **1979**.