

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23008
Docket Number CL-22982

Paul C. Carter, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(Express and Station **Emploees**
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8793)
that:

(a) The Carrier violated Rule 27 and others of the Clerks' Agreement beginning on November 13, 1975 when **they** did withhold **Mr.** Wayne B. Fields from service and did then after investigation on Nwember 24, 1975 find him medically disqualified for all service, and; *

(b) **Mr.** Wayne B. Fields should **now** be ret-d to full service with the Carrier, **with** all rights unimpaired **and** be compensated for each day he has been withheld from service.

OPINION OF BOARD: Prior to the occurrence giving rise to the dispute herein, **claimant was** regularly assigned to **Operator-Leverman** position 8:00 A.M. to 4:00 P.M., Sunday through Thursday, at **KC** Junction, Kentucky.

The record before the Board **shows** that Carrier had reason **to** believe that claimant, who was born on June 5, 1908, was not medically qualified to continue to perform service **in** a satisfactory **manner**. **He was** required to undergo several evaluations. He was seen by a psychiatrist **on** August 13, 1975, and by an internist and a psychologist on October 1, 1975. After consideration of the reports by Carrier's Medical Department, it was determined that **Claimant** was not medically qualified **to** continue to perform service. He was notified and was held out of service **beginning** November 13, 1975.

Although **many** awards of this Board during the **last number** of years have held that physical disqualification does not constitute **discipline** or require handling **under** the discipline rule, the parties here involved, **as** a result of an early award by this Division (**2144** rendered April 5, **1943**), have **handled** physical disqualification cases **under the** discipline rule of the **Agreement (Rule 27)**. **On** Nwember 13, 1975, claimant was notified to attend an investigation **in** the office of Assistant Superintendent at **Covington**, Kentucky, charged with not being medically qualified for service.

At the request of a representative of the **Organization**, the investigation was postponed to November 24, 1975. **As** result of the investigation, claimant was notified on November 28, 1975, that "you are not medically qualified." In the investigation the claimant stated:

"I have a note **from my** doctor 'Mr. Fields is able to return to work at any time' and that is dated **November 21, 1975**, signed by Doctor A. **Martinez.**"

Although claimant was questioned by the hearing officer as to the **type** of examination given **him** by Doctor **Martinez**, neither the claimant nor his representative actually presented the report from Doctor Martinez, or requested that it be **made** a part of the record.

* As a result of **claimant's statement** at the investigation concerning the note from Dr. Martinez, request was made by the Organization for a "neutral doctor" examination. The claim was appealed to the Carrier's highest designated officer of appeals on that basis. On December 29, 1976, Carrier's highest designated officer **of appeals** denied the claim to the General Chairman, and pointed out **that at no** time during the hearing was any statement presented by claimant from Dr. Martinez "nor has any such 'note' been presented during the subsequent handling of this matter on the property." The Carrier, **in** its letter of December 29, 1976, did propose a procedure to be followed **in** securing a "neutral doctor" examination of claimant if, **in** fact, a medical dispute existed concerning **claimant's** condition. On February 10, 1977, the Carrier's highest designated officer of appeals again wrote the General Chairman:

"We have investigated this matter **and find** Mr. Fields was disqualified based **on** examinations by an Internist, a **Psychiatrist and a** Psychologist. **Other than a** statement by Mr. Fields **in** the Board of Inquiry that: 'I have a note from my doctor - "Mr. Fields is able to return to work at any **time,**" and that is dated November 21, signed by Doctor A. Martinez,' there is no evidence whatsoever in the record to support your contention that a **medical** dispute of the Carrier's medical findings exists. Barring **any medical** evidence to the contrary, we **must** abide by the **decision** of our Medical **Department.**

"If **you** have a copy of the **statement** from Dr. A. Martinez referred to above, or from any doctor, **will** you please furnish copy to this office."

The *Carrier* **states** that in conference on February 22, 1977, the note **from Doctor** Martinez concerning his **examination of claimant was** submitted. There is no showing that Doctor Martinez is a psychiatrist or psychologist.

The record shows **that claimant was** granted a **full annuity** by the Railroad **Retirement** Board effective February 1, 1977. **Many awards** of this Board have recognized the right of the Carrier to determine the physical fitness of its **employees**. See Awards **11143**, 15367, 18512, 20652, 21340, 21896, and 22553. The *Carrier's* **action in our present** dispute was **based** on reports of a **psychiatrist**, a **psychologist** and an **internist**. Its action **was not** arbitrary, capricious or in bad faith. The **claim** will be denied.

As we **have** decided the dispute on its merits, it is not necessary to pass upon the procedural and **other** issues raised by the Carrier.

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 **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 17th day of October 1980.