

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31578  
Docket No. CL-32172  
96-3-94-3-598

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Transportation Communications International  
( Union  
**PARTIES TO DISPUTE:** (CSX Transportation, Inc. (former Seaboard  
( Coast Line Railroad Company)

**STATEMENT OF CLAIM:** "Claim of the System Committee of the  
Union (GL-11110) that:

- (1) Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, violating Rule 40 of the Agreement, when it medically disqualified Clerk D. R. Brown, ID 171587, from CSX Transportation.
- (2) As a result of the above-stated violation, the Carrier shall:
  - (a) Compensate Clerk D. R. Brown, LD. 171587, for all time lost, commencing February 24, 1993, and continuing until the violation is corrected.
  - (b) Compensate Clerk Brown any amount she incurred for medical or surgical expense for herself or dependents to the extent that such payments would have been paid by Travelers Insurance Company Policy GA-23000.
  - (c) Compensate Clerk Brown interest at the rate of 10 per cent, compounded annually on the anniversary of this claim, for amount due under item No. 2(a) above.
  - (d) Clear Claimant's personal record of any reference of the hearing of March 18, 1993, and the medical disqualification by CSX Transportation."

**FINDINGS:**

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Effective February 16, 1993, Claimant, an employee with 16 years of service who worked in the Carrier's Transportation Department, was awarded Position 227 in the Materials Department at Waycross, Georgia. Because of the transfer between departments, Claimant was required to submit to a physical examination which included an eye test. Management in the Materials Department became aware of a heavy lifting restriction from Claimant's doctor dated December 12, 1990 in Claimant's record ("Deborah Brown is not able to do yard labor type work at this time due to a spontaneous flare up of a chronic back pain."). Claimant was returned to the Guaranteed Extra Board pending evaluation by the Carrier's Medical Department concerning the physical examination and the lifting restriction.

Claimant provided the Carrier a statement from her physician rescinding the lifting restriction effective February 17, 1993 ("Deborah Brown is recovered from her chronic back condition. ..."). However, on February 24, 1993, the Carrier's Chief Medical Officer found Claimant unqualified to perform any service based upon his determination that her corrected vision did not meet the Carrier's standards. Claimant was informed by the Chief Medical Officer that she would be permitted to return to work only upon a physician's determination that her vision had been corrected to 20/50 for distance vision and 20/45 for near vision. Claimant was paid for time lost during the period from February 16, up to but not including February 24, 1993.

By letter dated March 26, 1993, the Carrier's Chief Medical Officer authorized Claimant's return to service stating that:

**“Upon review of recently received medical information I now find you medically qualified to perform railway service with the restrictions of no work around or operation of dangerous & moving equipment, effective 03/26/93. I have contacted your supervisor who has informed me that there is work available for you that meets these restrictions.**

**If you have not returned to work, please contact your supervisor if he has not already contacted you.”**

**The Organization states that Claimant was not returned to service until April 14, 1993.**

**On March 1, 1993, Claimant requested an Unjust Treatment Hearing under Rule 40 which was held on March 18, 1993. The Carrier found Claimant was not unjustly treated. This proceeding followed.**

**As the Carrier asserts, it is well settled that, absent arbitrary treatment, the Carrier is entitled to determine whether its employees are fit to perform service. First Division Award 17154; Second Division Awards 7497, 9961; Third Division Awards 20652, 22553, 23008, 25013. The Carrier made two determinations in this case that Claimant was not fit to work. The first fitness determination was that Claimant was not fit to perform the duties of her February 16, 1993 bid into Position 227 in the Materials Department. The second fitness determination was that Claimant was not fit to perform any service as a result of her eyesight. In order to resolve this matter, both of Carrier’s fitness determinations will have to be examined to determine whether those decisions were arbitrary.**

**The Carrier’s first determination that Claimant was not fit to work Position 227 was not arbitrary. Although Claimant’s heavy lifting restriction was removed on February 17, 1993 by Claimant’s doctor, due to the source of the problem as identified by Claimant’s doctor (“chronic back pain”, “her chronic back condition” which had, in the past, “flare[d] up”) the Carrier had a rational basis for concern that Claimant might not be able to safely perform work in the Materials Department which included lifting heavy cartons and materials. Coupled with Claimant’s vision problems, the Carrier’s safety related concerns for work in the Materials Department were underscored. We therefore cannot find that the determination that Claimant was not fit to perform the job in the Materials Department was an arbitrary determination.**

The Organization's argument that other employees were treated differently than Claimant is not persuasive. The Organization's argument is based upon hearsay and factually unsupported assertions which we do not believe rise to the level of proof necessary to meet the Organization's burden to demonstrate disparate treatment of employees similarly situated to Claimant.

The Carrier's second fitness determination requires a different result. Although Claimant was returned to the Transportation Department (from where she came) as a result of the eye examination given to Claimant when she sought to transfer to the Materials Department, effective February 24, 1993, Claimant was determined by the Carrier's Chief Medical Officer to be "unqualified for all service - remove at once." As a result, Claimant was held out of all service from February 24, until she was returned to service on authority of the Chief Medical Officer's March 26, 1993 letter.

While we found that Claimant's eyesight could be part of a rational basis for the Carrier's determination that Claimant was not fit to work in the Materials Department, based on this record, we cannot make the same finding that a rational basis existed for the Carrier's determination that Claimant could not work in the Transportation Department justifying her being withheld from service.

The following testimony by Claimant in the Unjust Treatment Hearing is un rebutted:

**"[Q.] In regards to [the Carrier's Chief Medical Officer] Dr. Thomasino's findings, how long have you had this vision problem?"**

**[A.] For years.**

**[Q.] Years, how many years, can you define that more?"**

**[A.] For at least 19 or 20.**

**[Q.] How many years have you been employed with the Railroad?"**

**[A.] It will be 16, July, June 22, 1993 will be 16 years.**

**[Q.] So you had this problem before you were ever employed, is this correct?"**

**[A.] Yes.**

[Q.] Has the Railroad ever examined your eyes before?

[A.] When I hired on, they had their company doctor examine me.

\* \* \*

[Q.] Have you been under a physician's care for your eyes all this time?

[A.] Yes I have.

[Q.] All this time?

[A.] Yes sir.

[Q.] Is your status that of improving or deteriorating or stable or what?

[A.] Stable."

Thus, the record shows that the Carrier was or should have been well aware of Claimant's eye condition (purportedly glaucoma) which had not changed over the years and yet, until Claimant attempted to transfer to a different Department, the Carrier permitted Claimant to work. There is nothing to indicate that, notwithstanding Claimant's eye condition, she did not safely perform her duties in the Transportation Department. In short, given the Carrier's long knowledge of Claimant's eye condition, there is no rational basis in this record to support its determination that Claimant could not perform duties in the Transportation Department.

The Chief Medical Officer's letter of March 26, 1993 adds little to the Carrier's rationale for holding Claimant out of service where the Carrier had long known of Claimant's eye condition and there was no evidence to show that she was not safely performing her duties. From that letter, we do not know what information the Chief Medical Officer examined, or whether that documentation provided any different information about Claimant's eye condition than what the Carrier had already long known.

Thus, the decision to hold Claimant out of service in the Transportation Department as a result of her eye examination was arbitrary.

We note that in his letter of March 26, 1993, the Carrier's Chief Medical Officer placed restrictions on Claimant's ability to perform certain work in the Transportation Department ("with the restrictions of no work around or operation of dangerous & moving equipment") and further stated that "there is work available for you that meets these restrictions." From the record before us, we are unable to definitively ascertain the extent of those restrictions; how those restrictions compare to the actual duties performed by Claimant prior to the incidents in this case; or the extent of limitation, if any, such restrictions limit Claimant's ability to work the same number of hours as before. Again, the Carrier has the right to make fitness determinations subject to non-arbitrary action. Those types of disputes, if any, stemming from the March 26, 1993 letter from the Chief Medical Officer will have to be left to the claims handling procedure.

As a remedy, Claimant shall be made whole in all respects for all time she was withheld from service. Because Claimant was improperly withheld from service, the Carrier cannot argue that it is entitled to a reasonable period of time in which to restore her to service without having to compensate her for that missed time. However, in agreement with the Carrier, we find no contractual support to justify the Organization's request for an interest payment to Claimant on the lost backpay or for removal of all references in Claimant's record to the Unjust Treatment Hearing requested by her.

Finally, in light of the result, the Organization's other arguments are moot.

### AWARD

Claim sustained in accordance with the Findings.

### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 29th day of August 1996.