

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26056
Docket Number MW-25937

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company
((Northern Region)

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

(1) The Carrier violated the Agreement when it improperly withheld Trackman J. A. Burch from service April 29, 1983 to May 24, 1983 (System File C-TC-1654/MG-4080).

(2) Because of the aforesaid violation, Trackman J. A. Burch shall be allowed sixteen (16) days of pay at his straight time rate."

OPINION OF BOARD: The record indicated that Claimant marked off duty on March 31, 1983, because of personal illness related to a diabetic condition. During his absence, Claimant was hospitalized five (5) days and remained at home another week under medication.

Claimant reported for work on April 18, 1983, subsequent to his personal physician's approval. Claimant was thereby directed by a Supervisor to present himself to a physician designated by Carrier at the Medical Group of Michigan City for a return to duty examination.

Claimant's fitness for duty was determined after a physical and he was released to work without any restrictions the same day. He performed his regular job duties for two (2) weeks before Carrier Chief Medical Officer notified him he was medically unqualified to return to duty pending more information concerning his diabetic condition.

Although there was not any reoccurrence of any medical problems, Carrier contends that it properly withheld Claimant from service during the period involved, in order to obtain current medical information, including records of treatment.

The Board notes that Claimant was not requested to submit to any physical examination nor did Carrier request any additional medical information.

Further, there is no evidence in the record to indicate the recommendation of any physician who examined Claimant was not thoroughly considered or, that competent medical evidence existed to prevent Claimant from carrying out his duties.

After a careful review of the record, the Board concludes there was not a reason to withhold the Claimant from service when he had been pronounced fit by competent physicians and returned to work. The record does not establish any need to justify taking Claimant out of service.

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 Employee involved in this dispute are respectively Carrier and Employee 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

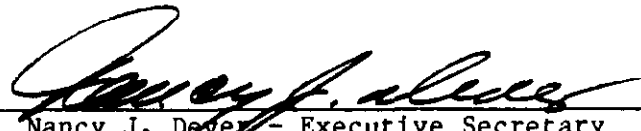
The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 11th day of June 1986.