

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13435

Docket No. 13352

99-2-98-2-40

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(International Association of Machinists and  
( Aerospace Workers

**PARTIES TO DISPUTE:** (

(Atchison, Topeka and Santa Fe Railway Company

**STATEMENT OF CLAIM:**

That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the "Carrier") violated Rule 43 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the "Organization") when it wrongfully and incorrectly removed the Claimant Joe D. Dodd (hereinafter referred to as the "Claimant") from service from Noon of March 12, 1997 until April 13, 1997. The Claimant was on vacation from March 17 through March 21, 1997. His rest days were Saturday and Sunday and he worked first shift. Accordingly, we request that he be paid at his pro rata rate of pay for the 18 and one-half work days that he was improperly withheld from service.

**FINDINGS:**

The Second 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 were given due notice of hearing thereon.**

**From the on-property handling it is Carrier's position, supported by a statement from Claimant's Supervisor (that is unrefuted), that on February 27, 1997, during the morning line-up, Claimant was assigned to do a 92 day federal inspection on a locomotive. After the line-up, Claimant approached his Supervisor stating he would not be able to perform all the duties required in the inspection process. This was due to a back injury that occurred in a traffic accident several years ago and has since deteriorated.**

**The Supervisor advised Claimant to talk to the General Foreman who in turn advised Claimant to secure a medical opinion from his doctor as to his ability to perform his duties.**

**Claimant complied and returned with a statement restricting his duties to lifting a maximum of 10 pounds. Upon receipt of Claimant's doctor's restriction, and not having any positions that had a 10 pound maximum on what was being handled, the General Foreman immediately disqualified Claimant from service, pending advice from the Medical Department.**

**The Medical Department concurred with Claimant's doctor's diagnosis and did, 30 days prior to Claimant's doctor's full release to unrestricted duty, allow claimant to return to duty in accordance with their work hardening policy.**

**With the Medical Department participating in this matter, the General Foreman was relieved of any responsibility in determining what work Claimant could or could not do. When Claimant was allowed to return to work under the umbrella of the work hardening policy, the Foreman could then work around Claimant, assigning at first, light duties, etc.**

**The claim is for the 18 ½ days lost by Claimant from the time the General Foreman disqualified him from service until the Medical Department allowed his return pursuant to the work hardening policy based upon an alleged violation of Rule 43(c).**

**The claim must fail for lack of a proven Rules violation. It is true that the Supervisor, at first, who disqualified Claimant, was the General Foreman, but his decision supported by Claimant's doctor and was subsequently backed by the Medical**

**Department. The General Foreman exercised good judgement. He had no basis to dispute Claimant's doctor's statement, and disqualified Claimant for the benefit not only of the Carrier, but for the benefit of the Claimant. It was a prudent move by the General Foreman. Under the circumstances evident here, the Board determines no Rule was violated by the Carrier.**

**AWARD**

**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.**

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

**Dated at Chicago, Illinois, this 16th day of June 1999.**