

NATIONAL RAILROAD **ADJUSTMENT BOARD**

**THIRD** DIVISION

Award Number 20701  
Docket Number MW-20723

**Francis X. Quinn**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(Norfolk and Western Railway Company

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

(1) Section Foreman **J. D. Billiter** was improperly withheld from service from January 12, 1973 through March 28, 1973 (System File MW-WI-73-100).

(2) Section Foreman **J. D. Billiter** shall now be reimbursed for all wage loss suffered from January 12, 1973 through **March** 28, 1973.

OPINION OF BOARD: Carrier had the right to have Claimant examined by its Medical Doctors to determine whether he was physically qualified to perform the duties of his position (Section Foreman).

In the instant case, when Carrier held Claimant physically disqualified and held him out of service it assumed the risks attendant to fallibility. The record discloses that Claimant was physically and mentally fit and did not have any "difficulty". Thus, Carrier becomes obligated to make whole Claimant for loss of the fruits of his contractual entitlements. The examination should have been completed within ten days. Therefore, Claimant was wrongfully held out of service from January 29, 1973 through March 28, 1973. He is to be reimbursed for all wage loss suffered from January 29, 1973 through March 28, 1973.

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

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Opinion. That the Agreement was violated to the extent shown in

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Findings. Claim sustained to the extent indicated in Opinion and

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.