NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24857
THIRD DIVISION Docket Number MW-25072

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to compensate Trackman V. L. Drew at 100% of the trackman's rate during the period December 8, 1980 to February 15, 1981 (System File 100-400.A16-811/11-1780-200-3).

(2) Because of the aforesaid violation, the claimant shall be allowed the difference between what he was paid at 90% of the trackman's rate and what he should have been paid at 100% of the trackman's rate during the period December 8, 1980 to February 15, 1981.

OPINION OF BOARD: Claimant V. L. Drew entered service as a Trackman on November 13, 1979. His compensation was controlled by Article VIII, Section 1 of the October 30, 1978 Mediation Agreement which states in pertinent part:

"ARTICLE VIII - Entry Rates
Section 1 - Service First 12 - Months

Except as otherwise provided in this Article VIII, employees entering service on and after the effective date of this Article shall be paid as follows for all service performed within the first twelve (12) calendar months of service:

(a) For the first twelve (12) calendar months of employment, new employees shall be paid 90% of the applicable rates of pay (including COLA) for the class and craft in which service is rendered. However, an employee promoted to a higher class shall not be paid at a rate of pay lower than the rate he would have been paid had he remained in the lower class.

(b) When an employee has completed a total of twelve (12) calendar months of employment in any maintenance of way position (or combination thereof) the provisions of subparagraph (a) above will no longer be applicable. Employees who have had a maintenance of way employment relationship with the carrier and are rehired in a maintenance of way position will be paid at the full applicable rate after completion of a total of twelve (12) calendar months combined employment.

(c) Any calendar month in which an employee does not render compensated service due to voluntary absence, suspension, or dismissal shall not count toward completion of the twelve month period."

Claimant suffered a personal injury on June 17, 1980 which was not work related. As a result he was on medical leave for the following periods in 1980:

June 18 through September 23
September 30 through October 10
October 31 through November 28

Upon his return to work in December the Carrier continued to compensate Claimant at 90% of the applicable rate, and did so until February 15, 1981.

Organization contends the only calendar months which do not count toward the completion of the twelve month period are those specifically noted in Section 1(c). He futher contends he did not fail to render compensated service in any calendar month due to voluntary absence, suspension or dismissal and accordingly was entitled to be compensated at the 100% level after November 13, 1980.

The Carrier agrees it did not compensate Claimant at the 100% rate upon his return, pointing out he did not render any compensated services for the months of July, August and November. The Carrier argues Claimant's absence from work during those months was not "Carrier imposed" and therefore must be considered voluntary. This is the ordinarily accepted meaning of the term "voluntary absence" in the railroad industry according to the Carrier. In support Carrier cites two [1] awards which involved absences caused by observance of picket lines.

Organization contends the language of the 1978 Agreement is clear and directs the Board's attention to numerous Awards holding an Agreement must be applied and interpreted as written.

This Board cannot agree with the Carrier that any absence which it does not impose is necessarily a "voluntary absence" within the meaning of Article VIII, Section 1(c), nor does it believe the precedent cited supports such a proposition. Giving words their ordinary and accepted meaning this Board is unable to conclude absence due to legitimate injury or illness is a voluntary absence for purposes of the cited section. Accordingly, Claimant had completed the twelve month period when he returned to work in December and should have been paid at the 100% rate thereafter. The Carrier shall make Claimant whole for losses he suffered by its failure to compensate him at the proper rate.

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;

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1. Third Division Award 19869 and Third Division Award 16746

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 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 28th day of June, 1984