

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25029
Docket Number MW-25097

Eckehard Muessig, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when it improperly closed the service record of **Trackman** T. J. Schuster (System File C-M-1274/MG-3348).

(2) The Carrier further violated the Agreement when it improperly withheld **Trackman** T. J. Schuster from service beginning December 10, 1981.

(3) Because of the aforesaid violations, the claimant shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered beginning December 10, 1981.

OPINION OF BOARD: This dispute came about after the Carrier received a letter from the Claimant, dated December 10, 1981, in which he stated that he had been released for duty by his doctor and desired to return to service as soon as possible. Carrier points out that the Claimant had returned to duty on May 7, 1979, after being **reinstated** on a leniency basis. It maintains that, after working one hour and thirty minutes on May 7, Claimant declared to a Carrier official that he was resigning his position and left the property. Subsequently, the Claimant's name was removed from the appropriate Seniority Roster by the Carrier.

Following a series of exchange of correspondence and a conference between the parties, the Carrier rejected the appeal to place the Claimant in a duty status on the basic contention that he had voluntarily resigned from the service and, therefore, was no longer an **employee**.

The Board has thoroughly reviewed the record before it and finds no basis to sustain the claim. While we recognize the many contentions advanced by the Claimant and the Organization, with particular respect to his claim of personal injury, the fact remains that he left his assignment on May 7, 1979 and no substantive evidence has been presented to counter the Carrier's contention that it was a voluntary act on his part. It is this threshold issue that is controlling in the matter before us. Moreover, the Claimant's and Carrier's actions, during the two years and seven months following the May 7, 1979 incident, lends reasonable substance to the Carrier's contentions, for in that lengthy period, the parties had no substantive contact between them, clearly and credibly showing that, in fact, the employment relationship no longer existed. Accordingly, given all the facts and circumstances of the record, we must deny the claim.

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

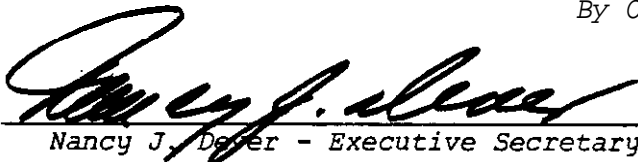
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 26th day of September 1984.