

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26360

Docket Number MW-26121

John E. Cloney, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Burlington Northern Railroad Company
(Former St. **Louis-San Francisco** Railroad Company)

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

1. The Carrier improperly withheld **Trackman** J. E. Kelly from service for the period beginning on May 16, 1983 and extending **through** July 19, 1983 (System File **B-2096/MWC-83-8-23A**).

2. **Trackman J. E. Kelly** shall be compensated for all wage loss suffered sixty (60) days **retroactive** from July 21, 1983."

OPINION OF BOARD: **Claimant**, who had been on leave of absence for medical reasons since September, 1982, called Carrier's offices on May 12, 1983, to report his physician had released him for duty on May 16, 1983. E. A. Wilson with whom he spoke told **him** he would have to be examined by a Company physician before returning. Claimant contends **Wilson** said he would call him as **soon** as he found a doctor. Wilson states he told Claimant to call back the following day at which **time** Wilson would give him the physician's name and help him set up an appointment. Wilson states nothing further was heard from **Claimant** **until** May 31, 1983, when he called again. At that time Wilson said he would send a letter **the** next day with the **doctor's** name and he did **so**.

On **June** 20, 1983, Claimant was examined by Dr. Higgins in Fort **Worth**, Texas and was told the results would be sent to Carrier, who would get in **touch** with him. The results of the examination were received by Carrier's **Assistant Chief Medical Officer** in St. Paul, Minnesota, on July 7, 1983. On July 8, 1983, Claimant's return to work was approved by the Assistant Chief Medical Officer. The approval was mailed to Tulsa. On July 11, 1983, **Wilson** told Claimant he was approved for return to work and where **his** seniority would allow him to report and whom he could replace.

This Board has consistently held a return to service can be delayed a reasonable time pending opinion of a Chief Medical Officer. Here there **is** a factual dispute regarding the reason for **the** delay in giving Claimant the name of a physician by whom he should be examined. We also **consistently** hold this Board is in no position to resolve such conflicts. Here, no resolution of conflict **is** necessary. **I: is** undisputed Claimant reported his availability for **duty** as of May 16, 1983. We believe at that point it was Carrier's responsibility to furnish the name of an examining physician within a reasonable **time**.

Certainly one week would be sufficient for Carrier to locate a physician. Since Claimant's call was made on May 12, 1983, **we** find Claimant is **entitled to** be compensated for the period May 20, 1983, to May 31, 1983, when he again contacted Carrier and was promptly given the physician's name.

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

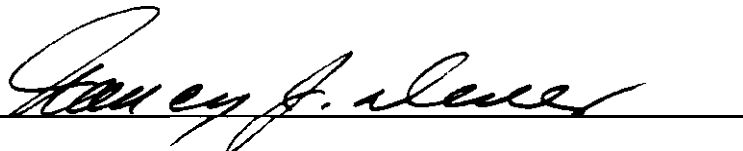
That **the Agreement was violated.**

A W A R D

Claim sustained in accordance **with** the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1987.