

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

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

Trackman B. G. Sanders shall be compensated for all **compensation** loss suffered by him January 30, 1984 to January 4, 1985 as a result of being improperly withheld from service (System File **180-20-843/11-150060-17**)."

FINDINGS:

The Third 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 employees 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 waived right of appearance at hearing thereon.

The complex factual background of this dispute is best set forth by a chronology of the events related thereto, as follows:

January 4, 1984 -- Claimant reports for duty as Trackman.

January 30 -- Carrier advises Claimant his application for employment is disapproved.

March 3 -- Claimant initiates series of letters questioning basis of disapproval of his application.

May 20 -- Carrier advises Claimant that earlier disapproval of application has been rescinded and directs Claimant to report for work.

May 21 -- Claimant reports, works for six hours and then absents himself from work thereafter.

May 30 -- Carrier advises Claimant by letter concerning rescission of application disapproval and advises Claimant to report within 15 days.

June 28 -- After his failure to report for work, Claimant is advised that he is terminated from service and told he may have an investigation of the circumstances.

September 11 -- Investigative hearing held, following Claimant's request.

October 10 -- Claimant is advised of result of investigation, sustaining his termination.

November 26 -- After matter is advanced in claims handling procedure, Award No. 287 of Public Law Board No. 1582 is issued, reinstating Claimant but without **backpay**.

Separately from the above, the Organization initiated a claim on June 21, 1984, contending that Claimant was improperly terminated and seeking reinstatement and **backpay** from January 30, 1984.

The Carrier initially argues that the June 21 claim was untimely in that it referred to Carrier's action five months earlier. The Board finds that the claim should be resolved on its merits, since, as the Organization argues, it is based on the Carrier's decision in its letter of May 30, 1984.

It is clear, however, that the period of the Claimant's employment from May 21, 1984, forward was fully disposed of by Award No. 287 of Public Law Board 1582. That Award effectively barred any **backpay**, at least from May 21 forward.


As to the period from January 30 to May 21, 1984, the Board finds the claim without merit. The Carrier acted within its right under Rule 20(a) in declining the Claimant's application within the first 60 days of his employment. The fact that it later reconsidered its judgment as to the Claimant's medical condition, based on further information, simply provided the Claimant a second opportunity to work for the Carrier. Such reconsideration in no way vitiated the Carrier's discretionary action in rejecting the Claimant's application within his first 60 days of employment. While it is not necessary for the Carrier to provide justification for such action, the record does show that it acted reasonably based on medical information, as well as the Claimant's health status during his initial period at work.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.