

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) Claimant D. Hahn shall be reimbursed for all compensation loss suffered by him including overtime pay, as a result of being improperly withheld from service beginning January 25, 1985 (System Docket CR-1416)."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 Claimant had been out of work for a period commencing October 25, 1984. He reported for a physical examination by the Carrier's physician on January 22, 1985, preparatory to returning to work on January 25. Because of a positive showing of alcohol in his blood or urine, he was withheld from service and later permitted to return to service on February 13, 1985.

The Organization argues that a showing of alcohol in the blood or urine was an improper basis for withholding the Claimant for service commencing three days later, since there was no indication that the Claimant would not be free of use of alcohol prior to his reporting for work on January 25, 1985.

If there were nothing more involved than the above facts, there might well be merit to the Organization's position. Such, however, is not the case.

When the Claimant last worked on October 24, 1984, he had lost consciousness. Test results at that time showed positive alcohol results. He was subsequently tested on January 10, 1985, and found medically qualified.

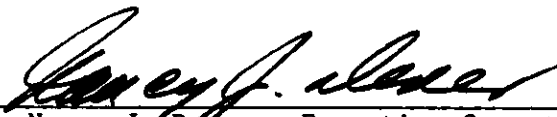
The test on January 22 again showed a positive alcohol result. In the Board's view the Carrier exercised reasonable prudence in determining that the Claimant was not then qualified to return to work, in view of the circumstances related above.

When the Claimant was restored to service, it was on the basis of his commitment to participate in a rehabilitation program, involving continuing tests as to his use of alcohol. The three-week period during which the Claimant was withheld from service was of minimal duration. No rule violation was demonstrated in the Carrier's determination to avoid a repetition of the October 24, 1984, incident which initially led to the Claimant's absence from work.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.