

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (Amtrak)
Northeast Corridor

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

(1) The Agreement was violated when the Carrier suspended Mr. R. Poe from service from January 24, 1984 until September 8, 1986 (System File NEC-BMWE-SD-1779).

(2) As a consequence of the aforesaid violation, Mr. R. Poe shall be allowed the following remedy:

'*** First, the Organization requests eight (8) hours at the pro-rata Trackman rate commencing January 24, 1984 and continuing on a Monday through Friday basis until September 7, 1986. Second the Organization requests that the claimant receive all overtime earned by the employee immediately junior to him on the Southern District Trackman roster.'

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.

Third Division Award 26041 describes the background in this case. Claimant asserted that he was injured on duty in a train collision in April 1979. As a result, Claimant was off work until August 13, 1979. Claimant worked until August 20, 1980, but then asserted that a back injury prevented

him from continuing his duties. A subsequent court proceeding resulted in a jury award on Claimant's behalf, but only in the amount of \$6,000 for Claimant's disability from April 20, to August 13, 1979. Nothing was awarded by the jury to Claimant for future entitlements. On October 24, 1983, Claimant submitted medical documents stating that he could resume work. The Carrier disallowed the request and on December 6, 1983, the Organization sought the establishment of a board of doctors under Rule 86. Award 26041 sustained the claim concerning the Carrier's failure to comply with the Rule 86 request.

Commencing January 24, 1984, the Carrier used a junior employee to fill Claimant's position. A board of doctors was not convened under Award 26041 because after Claimant made a request for a return-to-duty physical examination, Claimant was examined on September 2, 1986, and was found qualified to work. Claimant was returned to duty on September 7, 1986. This claim seeks compensation for Claimant during the period January 24, 1984, until his September 7, 1986, return to duty.


The record establishes that after Claimant made a request for a return-to-duty physical examination, the examination was given and Claimant was found medically fit to return to duty and return to duty was accomplished as of September 7, 1986. However, while the record establishes that Claimant was found fit to return to duty as of the September 2, 1986 examination, the record does not sufficiently establish that Claimant was fit to return to duty for the time period prior to his actual return to duty which is covered by this claim. Nor is there any evidence that the Carrier's actions after the issuance of Award 26041, i.e., in administering the examination, in reinstating Claimant after the examination, or in any other fashion constituted an unreasonable delay. Without such showings, this claim must be denied.

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 30th day of July 1991.