

NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1

THIRD DIVISION

Award No. 29511

Docket No. MW-29185

93-3-90-3-41

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance
(of Way Employes

PARTIES TO DISPUTE:

(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to permit Mr. I. J. McDaniel to return to service in accordance with his seniority beginning November 3, 1988 (Carrier's File 890115 MPR).

(2) As a consequence of the aforesaid violation, Mr. I. J. McDaniel shall be allowed eight (8) hours' pay at the trackman's straight time rate for each work day including holidays from November 3, 1988 until March 14, 1989."

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.

Claimant was on medical leave of absence resulting from an on-duty injury sustained on July 20, 1986. Subsequent to that date, Claimant submitted periodic medical documentation substantiating a continuation of his medical leave of absence status. However, in the Spring of 1988, Claimant was not able to be continued in a medical leave of absence status and was subject to recall. He was notified that he was being recalled to System Rail Gang No. 9103 on

June 22, 1988. Claimant did not respond and forfeited his Rail Gang seniority as provided in the Agreement. Claimant, though, continued to maintain a seniority status on Carrier's Arkansas Division. On November 3, 1988, he attempted to return to service. Medical documentation was submitted under date of November 18, 1988, indicating that he was physically qualified to return to work. He was not allowed to resume his duties as a trackman until March 14, 1989. The Claim before this Board seeks compensation for the time lost between November 3, 1988 and March 14, 1989.

It is the Board's view that Claimant was improperly denied the opportunity to exercise his seniority on the Arkansas Division subsequent to the date Carrier received medical documentation that he was able to resume work and it had a reasonable opportunity to evaluate this documentation and/or require its own examination. This documentation was received on November 18, 1988. Ten calendar days following receipt would be adequate, in the circumstances present here, to evaluate the information and/or order an additional examination. Accordingly, Claimant was denied an opportunity to work effective November 28, 1988. He is entitled to compensation for time lost subsequent to that date, if his seniority would have been sufficient for him to hold a job.

Claimant shall be compensated for any days his seniority would have entitled him to work between November 28, 1988 and March 14, 1989. In all other respects the Claim is denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Beever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.