

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32188
Docket No. MW-31926
97-3-94-3-300**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. C. D. McDowell from service beginning April 7, 1993 as a result of its failure to promptly provide 'physical forms' to permit him to submit to a physical examination [System File SPG-TC-8002/12(93-647) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. C. D. McDowell shall be compensated at the SPG trackman's rate of pay for '... ten (10) hours for each of the following claim dates April 7, 8, 12, 13, 14, 15, 19, 20, 21, 22, 26, 27, 28, 29 and May 3, 1993, plus meal allowance of \$84.00 and travel expense of \$40.00 for each of the following weeks April 5-8, 12-15, 19-22, and 26-29....'"**

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 employee 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 were given due notice of hearing thereon.

By letter of June 4, 1993 the Organization alleges that the Carrier violated provisions of the SPG Agreement, wherein the Carrier failed to send Claimant his medical forms to schedule a return-to-work physical examination. The Organization argues that the Carrier's failure to timely act resulted in the Claimant's inability to promptly return to work. Instead, when Force 6XC6 began laying rail, junior employees performed work which should have been performed by the Claimant.

The Organization alleges that under the B&O jurisdiction no Rule required employees to obtain forms. In fact, said forms have automatically been mailed by the Division Engineer's office since 1988 when the physical policy was initiated. The Organization argues that the Carrier violated the Agreement by failing to provide the forms. The Organization points to Section 3 of the CSXT Agreement. It argues that Claimant's Agreement rights were violated when he was not sent the forms resulting in his failure to timely return to work.

The Carrier argues that it violated no Agreement provision. Because the Claimant had been out of work it was his responsibility and not the Carrier's to obtain the proper forms. The Carrier maintains that employees furloughed more than 90 days are required to have a medical exam prior to returning to service. That requirement is clearly listed on the System Production Gang (SPG) Bulletins. The Bulletin was mailed to the Claimant and it was the Claimant's responsibility to obtain the forms. The Carrier disputes the jurisdiction of the B&O Agreement, but argues that the Division has never routinely sent out medical forms. When they have been sent out for SPG positions it was as a matter of courtesy.

The Board searched the record for proof. The Organization has that burden. The Organization asserted that it is the Carrier's obligation to send out forms. We studied Section 3 of the CSXT Agreement and conclude that it is not relevant. We have found no Rule of the Agreement which the Organization has pointed to which has been violated. The Organization has put forth numerous allegations which the Carrier has denied.

The Board's review of this claim finds that its foundation is allegation and argument without proof. When as here, the Organization fails to demonstrate language that the Carrier ignored and substantial probative evidence to overcome Carrier's denials, the claim must fail. The Board denies the claim for lack of proof.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of August 1997.