

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33346
Docket No. MW-32277
99-3-95-3-92**

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.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned a junior machine operator to perform work on the Claimant’s regularly assigned ballast regulator position on SPG Force 5XT6 on February 9, 10, 11 and 12, 1994 [System File SPG-TC-9122/12(94-251) CSX].**
- (2) As a consequence of the above-stated violation, Claimant R. D. Younkin shall be allowed forty (40) hours’ pay at the applicable SPG Class ‘A’ Machine Operator’s rate.”**

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.

On February 7, 1994 while operating his ballast regulator, the Claimant was ordered to clear the main line for the passage of an Amtrak train. Claimant clearly felt his machine was fouled and stopped it for a check. He found it was indeed entangled with copper pipe, but after clearing the machine, it would not start. His Supervisor was by this evidence irate, "shouting and cursing." When the machine was finally jump started and the track cleared, the Claimant stated that he had a severe headache and needed medical attention. On that date, he received medical care in Lake City, Florida, which included an injection and pain pills. The Claimant was told not to return to duty on February 8, 1994.

The claim developed when the Claimant returned to work his Machine Operator position on February 9, 1994. The Carrier requested medical information that he was released to return to duty. When the Claimant asked the Florida physician to clear him he was unsuccessful and informed by the physician that he would have to have his family physician clear him to return. The Claimant drove to Somerset, Pennsylvania, and on Friday, February 11, was given a medical release. It was faxed to the Chief Medical Officer and one hour later the Claimant was informed that he was medically qualified to return to work. When he returned to work, he found out that a junior employee had operated the machine on his rest days. The claim is for violation of Sections 1, 13 and 15 of the SPG Agreement.

Importantly, nowhere on the property did the Organization ever demonstrate where a Rule was violated. Nor do we find any provision with language, which when compared to the facts, finds the Carrier's actions improper. The Organization takes the position that the Claimant had to be instructed on February 7, 1994 to obtain a medical release. We find no provision or language suggesting same. Nor do we find anything in the record to suggest a violation of the Agreement in the Carrier's request for medical information. We searched to determine if the Carrier may have acted improperly. Again, no provision is cited that seems to demonstrate impropriety. The facts indicate that it was not the Carrier's Medical Department that told the Claimant to go to his family physician; there is no record that the Claimant requested clarification from the Carrier before he drove 1200 miles; there is no instruction from the Carrier to return to Pennsylvania or anything to demonstrate that this was under the control of the Carrier. When the Carrier's Chief Medical Officer was faxed notification on February 11, 1994 of the Claimant's medical condition, he was immediately cleared to return to work. There is no record that the Claimant inquired as to his position or his gang at

that time. The Board finds no proof of any inaction or action on the part of the Carrier that violated an Agreement Rule on this property. As such, the claim must be denied.

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 23rd day of June 1999.