

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34229
Docket No. SG-34866
00-3-98-3-577**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Elgin, Joliet & Eastern Railway Company (EJ&E):

Claim on behalf of D. D. Moser for payment of 120 hours at the straight time rate and 42.5 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 76, when it arbitrarily held the Claimant out of service from June 21 to July 21, 1997. Carrier’s File No. 144-243. General Chairman’s File No. 97-76-EJE. BRS File Case No. 10748-EJE.”

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.

The dispute at bar includes several allegations involving the Carrier’s actions on June 20, 1997, and thereafter. The Organization alleges that the Carrier violated the

Agreement by removing the Claimant from service without valid reason and further delaying return. The Organization further maintains that the Claimant was informed that if he were eventually found fit for service, he would be made whole for lost time. As the Carrier had neither a legitimate reason for removing the Claimant from service, nor properly compensated the Claimant when he was returned to service, the Organization maintains the claim should be sustained.

The Board has reviewed the case as it developed on the property and cannot find evidence of record to support the Organization's position in the whole of this claim. We find that on June 20, 1997, the Claimant advised his Supervisor that he had problems with herniated disks and had been advised by his physician that heavy physical work might create "complications and possible paralysis." The Board's review of the record finds no denial that the Claimant refused to sign the medical release forms on June 23, 1997 so that the Carrier could assess his medial condition. The Claimant was fully informed that his signature was a precondition to evaluation and return to service.

After study of the record, the Board finds that the Claimant did not comply with the instructions to complete the medical forms until July 10, 1997. The request for compensation from June 21 until July 11, 1997 cannot be shown to be due to the Carrier's failure to act appropriately. As soon as the Claimant signed the required forms, the Carrier provided a medical evaluation. Any loss of work stems from the Claimant's actions and not from any arbitrary or untimely action on the part of the Carrier. Therefore, 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 August, 2000.