

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35626
Docket No. MW-32645
01-3-95-3-484**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Eastern Lines)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when, after recalling senior furloughed Machine Operator G. R. Gonzalez to service, it improperly withheld him from service and allowed junior employee H. R. Magallanes to fill a machine operator vacancy beginning April 4, 1994 and continuing (System File MW-94-249/BMW 94-506 SPE).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. R. Gonzalez shall be allowed eighty (80) hours' pay at the machine operator's straight time rate, all overtime worked and he shall be credited with ten (10) days for vacation qualifying purposes.”**

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.

Prior to March 1994, G. R. Gonzalez ("Claimant") and H. R. Magallanes, each of whom had established and held seniority as a Machine Operator within the Track Subdepartment, were furloughed. It is not disputed that the Claimant (May 24, 1982) was the senior Machine Operator compared to Magallanes (August 27, 1984), by some 18 months. The chain of events leading to this claim began when the Carrier recalled the Claimant to service by means of a Certified Mail letter dated March 9, 1994. The Claimant responded promptly and took a normal return-to-duty physical examination conducted by Dr. Ramon Garcia in Del Rio, Texas, on March 28, 1994. Dr. Garcia reported finding an excessive amount of sugar in his urine and recommended that he be evaluated for possible diabetes by his personal physician. As a result of that examination, the Carrier's Medical Department would not allow the Claimant to return to work until his blood sugar was under proper control.

The Claimant did not see his personal physician, Dr. Alfredo Gutierrez, until April 12, 1994. In the meantime, junior Machine Operator Magallanes was also recalled from furlough, passed the physical examination without incident and returned to duty beginning April 4, 1994, filling a Machine Operator vacancy on the San Antonio Division. The Carrier was provided Dr. Gutierrez' report on April 13, 1994 and the Carrier's Medical Department cleared the Claimant to return the very same day. The April 12, 1994 report of Dr. Gutierrez is significant in several aspects: He reports in the Diagnoses section: "I Border-line diabetic"; in the Current Medication and Dosage section, he reports: "Diet, diabetic" and in the Additional Comments section, he states: "Patient has been counseled on the importance of diet, repeat blood sugar +1 month, will decide at that point if medication needed."

The Organization presented a November 1994 report from Dr. Gutierrez showing the Claimant with normal blood sugar some eight months after the claim dates, but the April 12, 1994 report by Dr. Gutierrez in fact confirms the reasonableness of the expressed concerns of the Carrier's Medical Department and of Dr. Ramon Garcia in March-April 1994. Moreover, it is worth noting that one year later, the Claimant's physician did diagnose the Claimant with diabetes for which he was disabled from work between April 24, and May 5, 1995. We find no violation of the Claimant's seniority rights in the facts of this record and no evidence that the delay in his medical clearance to return to service in April 1994 was arbitrary or unreasonable. So far as the record shows, the only thing that delayed his return to work was his own medical condition.

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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 28th day of August, 2001.