

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36267
Docket No. MW-35779
02-3-99-3-760

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier refused to allow Mr. J. L. Wollan to work his assigned position during his work week of November 10 through 14, 1997 (System File R1.221/8-00337).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. L. Wollan ‘. . . shall now be reimbursed for the equivalent of forty (40) hours pay at the pro rata rate (\$15.29 x 40 = \$611.60) and have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above violation.”

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 Claimant requested and was granted a leave of absence beginning on Friday, November 7, 1997 so that he could attend UTU training classes for an anticipated transfer from the maintenance of way craft to a transportation craft. The training class was scheduled to begin on Monday, November 10, 1997.

In order to transfer to a different department, a physical examination was required. The Claimant reported for the physical on November 4, 1997 and was given a drug and alcohol test at that time.

The Claimant was notified on November 9, 1997 that he could not report to the training class because the drug and alcohol test results had not yet been received. The results were received on November 14, at which time the Claimant began his training class.

The Organization contends in this claim that the Claimant should have been permitted to report to his assigned position as a Machine Operator until he was cleared to report for his scheduled training class. In the Organization's view, it was unreasonable and unnecessary for the Claimant to lose a week's pay. The Organization argues that the Carrier disregarded the Claimant's seniority rights and asserts that, because the Claimant had been actively working and was medically qualified to work in his assigned position within the maintenance of way craft, he should not have been withheld from service.

The Carrier responded on the property by arguing that the Claimant voluntarily pursued employment with another craft and was well aware of the obligation to pass the physical testing. Moreover, because the Claimant was on leave of absence, granting him the compensation claimed would be unwarranted.

Resolution of this dispute turns on the specifics of the claim itself. The Organization in its Statement of Claim asserts that the Carrier refused to allow the Claimant to work his assigned position for the week of November 10 through 14, 1997. We see no evidence in the record to support that contention. The Carrier granted the Claimant a leave of absence. Once the Claimant was informed that his drug and alcohol test results would not be received in time for him to begin the training class, the onus was on him to take steps to postpone his leave of absence and remain on his maintenance of way position until his test results were obtained. There is no indication that he did so. Under the circumstances, the Board does not agree that there was a

“refusal” on the part of the Carrier to allow the Claimant to work. Because the Organization did not carry its burden of establishing that critical point, 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 28th day of October 2002.