

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION****Award No. 36330  
Docket No. MS-36431  
02-3-00-3-704**

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

**(J. M. Lanham**  
**PARTIES TO DISPUTE: (**  
**(Norfolk Southern Railway Company**

**STATEMENT OF CLAIM:**

**“I, J. M. Lanham (403-88-4495) won my job back on December 27, 1997 from Special Board of Adjustment No. 1049 with full back pay, seniority, vacation, and all other rights unimpaired. I went back to work February 3rd 1998. I was subjected to harassment, and intimidation by my immediate supervisor, John Hill. I wrote to the company and the Union several times about this. The Union filed a grievance against the company and told them to treat Mr. Lanham equally. I wrote the Federal Railroad Administration about retaliation. Finally the stress of working under these conditions led to depression. I took a medical leave, beginning April 21st 1998. I got better and two Doctors I had seen released me to go back to work with no restrictions. Norfolk Southern Railroad said they wanted my medical records before they would give me a back to work physical. The Union said I must comply so I did. They then sent me for an all day evaluation by a Psychologist of their choice. He also released me to go back to work with no restrictions. Next, I received a letter from the medical department stating I had to report to a D.A.R.S. Counselor within 5 days or could possibly be terminated. There is no rule in the Agreement Book about reporting in 5 days at all. I did meet the D.A.R.S. Counselor, but would not let him evaluate me, because I had broken no rules or been charged with an on the job violation. In the meantime, I went to a licensed Alcohol Counselor on my own. He also released me, with no restrictions to go back to work at all.**

**I have written the medical department demanding to be put back to work immediately. I have been released to go back to work since June 17th 1998.**

**The particular question which I desire an Award is why the Railroad will not put me back to work when I have been released to do so.**

**The remedy I am seeking consists of reinstatement, seniority, back pay, and all other rights unimpaired, and also no D.A.R.S. Evaluation. I have done nothing wrong in the first place.”**

**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 facts which led to this claim are as follows:

On April 21, 1998, the Claimant, who had been working as a Laborer at Louisville, Kentucky, took a voluntary leave of absence for medical reasons. On June 9, 1998, the Carrier received a faxed copy of a May 22, 1998 letter from Psychiatrist D. Garst, which stated:

“To whom it may concern: Joe Lanham may return to work on June 1, 1998.”

Assistant Division Engineer Ellis contacted the Claimant to explain the Medical Department’s requirements for a proper work release. Ellis advised the Claimant that he would be on a “medical hold” until such records were received and reviewed by the Carrier’s Medical Department. On June 10, 1998, the day after their conversation, Ellis sent the Claimant a certified letter in which he detailed their discussion and reiterated the Medical Department’s requirements for work release.

On July 2, 1998, the Organization submitted a claim on behalf of the Claimant “for all pay beginning June 17, 1998, and continuing,” alleging that the Carrier did not promptly set up a return-to-work physical for the Claimant. The Organization further asserted that the May 22, 1998 letter from Dr. Garst met the requirements of a proper “doctor’s release.”

Thereafter, during an August 25, 1998 telephone conversation, Assistant Medical Director P. Lina again explained the requirement of a statement from the Claimant’s doctor, including medical records, so that the Medical Department could determine if the Claimant could return to work. During that conversation, the Claimant became “very belligerent and argumentative,” according to Dr. Lina, who concluded the conversation by assuring the Claimant that she would send him a second letter

explaining the Medical Department requirements for records and a work release. That letter, dated August 25, 1998 was sent to the Claimant, via certified mail.

On November 6, 1998, the Carrier sent the Claimant another certified letter restating the original requirements for medical records and a work release, and further informed the Claimant that he had ten days within receipt of the letter to comply with the instructions, or face possible disciplinary action. On November 12, 1998, the Claimant's personal physician faxed a copy of a letter from Psychiatrist Garst which stated that he had seen the Claimant, but because he was not "fully compliant with the treatment plan," Dr. Garst was no longer able to care for him. The Psychiatrist also informed the Carrier that he had tentatively diagnosed the Claimant with "a bipolar disorder with substance abuse."

Thereafter, on December 30, 1998, the Carrier's Medical Department advised the Claimant that he was scheduled for an independent medical evaluation with Dr. T. Eells, a psychologist. The results of the January 4, 1999 evaluation, which were sent to the Carrier's Medical Department, indicated that the Claimant suffered from "alcohol abuse, as well as a personality disorder which could complicate Mr. Lanham's adjustment to work settings."

As a result of Dr. Eells' evaluation, the Claimant was informed that he remained on Medical Hold pending further evaluation and/or treatment of his medical and/or emotional problems. The Carrier further informed the Claimant that, as required by Norfolk Southern's Policy on Alcohol and Drugs, he was to meet with a Drug and Alcohol Services (DARS) counselor. By letter dated January 29, 1999, the Organization protested the Claimant's required participation in DARS. However, after receiving a February 4, 1999 letter from the Carrier's Medical Director Dr. D. Prible, and a March 5, 1999 response from Director Labor Relations Piserchia, each of which explained the reasons for a DARS evaluation, the Organization did not progress this grievance any further.

On February 9, the Claimant met with the DARS counselor, but refused to be evaluated or to participate in the program. In the meantime, the claim initiated by the Organization, after subsequent appeals, was discussed in conference on September 7, 2000. In a follow-up letter dated September 14, the Carrier confirmed that the Claimant would remain on medical hold pending his compliance with the Medical Department's instructions as contained in Dr. Prible's August 1999 letter. With this understanding, the time limit to submit a claim for lost wages to arbitration was also extended to November 20, 2000.

Although the Organization declined to progress the claim, the Claimant submitted "an unadjusted dispute" to the Board by Notice of Intent dated November 12, 2000. In doing so, the Claimant failed to progress the matter in the usual and customary manner on the property, as prescribed by the mandatory requirements of Section 2, Second and

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**Section 3, First(i) of the Railway Labor Act. As a result, this claim is procedurally flawed, and must be dismissed.**

**AWARD**

**Claim dismissed.**

**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 26th day of December 2002.**