

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41397
Docket No. MW-40770
12-3-NRAB-00003-090012**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier withheld Mr. J. Steggall from service on his assigned foreman/flagman position on February 12 and continuing until February 16, 2007 [System File C-07-P018-13/10-07-0224(MW) BNR].**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants J. Steggall shall now be compensated for all lost straight time and overtime hours [totaling ninety (90) hours] at his respective and applicable rates of pay.”**

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 indicate that the Claimant was assigned as the Foreman/Flagman on the Orin Subdivision of the Powder River Division. On the evening of February 7, 2007, the Claimant drove to the hospital in Gillette, Wyoming, because he experienced chest pains and had not been feeling well while at work. The Claimant was admitted to Campbell County Memorial Hospital and tests were performed on February 8.

On February 9, 2007, Dr. Barnett released the Claimant for full duty with no restrictions, effective February 12, 2007. Additionally, he referred the Claimant to see his own cardiac physician, Dr. Purdy, in Rapid City, South Dakota. The Claimant's physician subsequently hospitalized him for a coronary arteriography and discharged him on February 10, 2007.

The Carrier's Medical Department received the Medical Status Form from Dr. Barnett on February 9 and on February 12, the Claimant was contacted about his health status. After the Claimant explained the medical treatment he received from the aforementioned physicians, the Medical Department recommended the approval of a Medical Leave of Absence for the Claimant through February 23, 2007, with the advice he could be released sooner. The Medical Department also advised the Claimant that because he held a DOT license, he would be subject to further review and it requested medical documentation regarding the Claimant from Dr. Purdy.

On February 15, the Medical Department received the requested information from Dr. Purdy. After a review of that report, the Medical Department advised the Claimant that he was approved to return to work, but that his DOT certification was placed "On Hold" until it was determined whether he needed a new certification examination. He was further advised that he needed to contact Comprehensive Health Services (Carrier's Neutral Administrator for CDL holders) after 24 hours to determine the status of his DOT certification. After the Claimant's

DOT certifications were deemed to be in order, he was returned to work on February 16, 2007.

It is the position of the Organization that although the Claimant was released for full duty on February 12, he was not allowed to work until February 16, 2007, which resulted in a loss of four days of work because of the Carrier's delay in processing the Claimant's return to service. It concluded by requesting that the claim be sustained as presented.

It is the Carrier's position that the claim was untimely submitted because the alleged violation began on February 12 and the claim was not received until April 13, 2007. It asserts that the Organization's delay constitutes a violation of Rule 42A inasmuch as the claim needed to be in the hands of the Carrier within 60 days from the date of the occurrence. On the merits, it asserted that the record shows that it properly withheld the Claimant from service until it was medically certain that the Claimant was fit for service. It closed by asking that the claim remain denied.

The Organization responded to the Carrier's contention that the claim was untimely. It argued that the Carrier was in error when it counted the 60 days from the first date of the violation. According to the Organization, the correct counting of the time period for the filing of the claim began with the last day of the violation, which was February 16; therefore, the claim was timely.

The Board thoroughly reviewed the record and determined that neither party's procedural argument on time limits was sufficiently persuasive. Thus, the claim will be resolved on its merits. Our review of the record reveals that, contrary to the Organization's assertions, the Carrier did not have all of the necessary medical documentation on February 12, 2007, so as to permit it to conclude that the Claimant was fit for service, because after Dr. Barnett released him for service, Dr. Purdy chose to hospitalize him for additional tests. Moreover, it was not refuted that the medical report and evaluation from Dr. Purdy was not received until February 15, and on the next day, he was cleared to return to work. The Board is not persuaded that the Carrier was dilatory in the review process or acted in an unreasonable or arbitrary manner in returning the Claimant to active service. Therefore, the Board finds and holds that the claim must remain denied.

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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 25th day of July 2012.