

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24087  
Docket Number MW-23401

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier improperly withheld Trackman E. L. Gillard from service for the period beginning on July 20, 1978 and extending through August 20, 1978 (Carrier's File S 310-283).

(2) The Carrier shall now allow Trackman E. L. Gillard eight (8) hours of pay for each work day within the claim period described above."

OPINION OF BOARD: The Claimant had been on a leave of absence and was required to submit to a physical examination when he attempted to return to work. On July 19, 1978 the Carrier's Chief Medical Officer notified the Personnel Department that the Claimant was physically fit to be returned to work but the Carrier did not notify the Employee because it asserted a lack of a then current telephone number. When the Claimant personally contacted the Trainmaster's office at a later date he was advised that he could return to work, which he did on August 21, 1978.

While it may be that the Carrier did not have the appropriate telephone number, nonetheless we do not feel that said fact should defeat the Claim. It is not uncommon to use the United States mail in an effort to reach employees; especially when they are away from the active work force and not on the payroll. We find nothing of record to indicate that the Carrier did not have a current address for the Employee and we feel that it should have attempted to locate him through that means.

Nonetheless, we feel that there was some obligation on the part of the Employee to mitigate the circumstances and at a point in time it is reasonable to require that he make certain inquiry as to the return to work. Accordingly, we will sustain the Claim for the period July 20 through July 31, 1978 and we will deny the Claim for the period of time after that date.

We have noted the procedural objections raised on the property and discussed by the parties; however we are unable to find any basis for failing to consider this Claim on its merits.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.


A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of January 1983.

