

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24858
Docket Number MW-25073

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier improperly withheld Trackman P. A. Duran from service for the period beginning on January 4, 1982 and extending through January 31, 1982 (System File 160-40015-822/11-1500-20-18).

(2) The Carrier shall now allow Trackman P. A. Duran eight (8) hours of pay for each work day within the claim period described in Part (1) hereof.

OPINION OF BOARD: On or about December 12, 1981 Claimant became ill and was admitted to Santa Fe Memorial Hospital with a diagnosis of Torticollis and Viral Pneumonitis. On December 22, 1981 he was discharged from the hospital and given a medical statement saying he was released for return to work as of December 28. When Claimant reported on December 28 he was wearing a neck brace. There is conflict regarding whether Claimant at that time stated he did not feel able to work but he was admittedly told he should obtain a further Medical Statement. On that same date he obtained a statement from a Dr. Sibbitt releasing him for work on January 4, 1982. On December 30 the Carrier sent Claimant Form 2820 - Spl. for completion. The completed form was received by the Carrier on January 7, 1982. On January 25 the Division Engineer received authority to return Claimant to service. Efforts to reach Claimant on the 25th were unsuccessful. When reached on the 26th Claimant requested and was given permission to remain off work until February 1, on which date he returned to service.

Claimant contends he was unreasonably held out of service from January 4 to January 31, 1982. This Board is of the opinion that Claimant was held out of service for an excessive period. However, it also notes Claimant could have returned to service earlier than he did. Claimant was out of service for 20 working days from January 4 to January 31. Taking into consideration the three day period of January 4 to 7 when the Form 2820 Spl. was received and the period after January 25 when Claimant was voluntarily out of service this Board will award Claimant ten days back pay as compensation for the period he was withheld excessively from service through no fault of his own.

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 Employes involved in this dispute are respectively Carrier and Employes 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

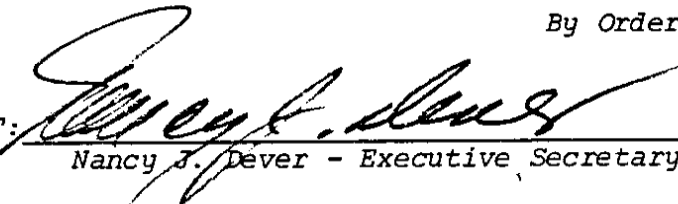
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984