

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26360
Docket Number MW-26121

John E. Cloney, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad Company
(Former St. Louis-San Francisco Railroad Company)

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

1. The Carrier improperly withheld Trackman J. E. Kelly from service for the period beginning on May 16, 1983 and extending through July 19, 1983 (System File B-2096/MWC-83-8-23A).

2. Trackman J. E. Kelly shall be compensated for all wage loss suffered sixty (60) days retroactive from July 21, 1983."

OPINION OF BOARD: Claimant, who had been on leave of absence for medical reasons since September, 1982, called Carrier's offices on May 12, 1983, to report his physician had released him for duty on May 16, 1983. E. A. Wilson with whom he spoke told him he would have to be examined by a Company physician before returning. Claimant contends Wilson said he would call him as soon as he found a doctor. Wilson states he told Claimant to call back the following day at which time Wilson would give him the physician's name and help him set up an appointment. Wilson states nothing further was heard from Claimant until May 31, 1983, when he called again. At that time Wilson said he would send a letter the next day with the doctor's name and he did so.

On June 20, 1983, Claimant was examined by Dr. Higgins in Fort Worth, Texas and was told the results would be sent to Carrier, who would get in touch with him. The results of the examination were received by Carrier's Assistant Chief Medical Officer in St. Paul, Minnesota, on July 7, 1983. On July 8, 1983, Claimant's return to work was approved by the Assistant Chief Medical Officer. The approval was mailed to Tulsa. On July 11, 1983, Wilson told Claimant he was approved for return to work and where his seniority would allow him to report and whom he could replace.

This Board has consistently held a return to service can be delayed a reasonable time pending opinion of a Chief Medical Officer. Here there is a factual dispute regarding the reason for the delay in giving Claimant the name of a physician by whom he should be examined. We also consistently hold this Board is in no position to resolve such conflicts. Here, no resolution of conflict is necessary. It is undisputed Claimant reported his availability for duty as of May 16, 1983. We believe at that point it was Carrier's responsibility to furnish the name of an examining physician within a reasonable time.

Certainly one week would be sufficient for Carrier to locate a physician. Since Claimant's call was made on May 12, 1983, we find Claimant is entitled to be compensated for the period May 20, 1983, to May 31, 1983, when he again contacted Carrier and was promptly given the physician's name.

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

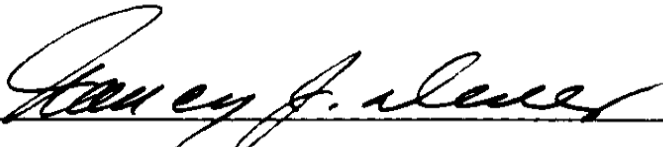
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1987.