

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26695
Docket Number MW-27013

Ronald L. Miller, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Denver and Rio Grande Western Railroad Company

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

(1) Section Foreman S. A. Mazotti shall be returned to his position as section foreman and he shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service beginning December 4, 1984 (System File D-6-85/MW-14-85)."

OPINION OF BOARD: The Claimant, Mr. Sam Mazotti, was incarcerated on August 14, 1984, as a result of a confrontation with the police. Mr. Mazotti was charged with assault with a deadly weapon, felony menacing, and resisting arrest. Subsequently, on June 6 1985, Mr. Mazotti was convicted of the criminal charges and was sentenced to eight (8) years probation on the condition that he serve a ninety (90) day jail sentence and 960 hours of public service. During portions of the period that criminal charges were pending against Mr. Mazotti (August 14, 1984 - June 6, 1985), Mr. Mazotti was hospitalized for examination to determine his competence to stand trial and underwent out-patient therapy. On December 4, 1984, a physician certified that:

"Mr. Mazotti is fully able to return to work this date with no restrictions or qualifications on his functioning in any type of work."

Nevertheless, on December 14, 1984, the Carrier informed Mr. Mazotti that he would not be allowed to return to service. Following the sentencing by the Court on June 6, 1985, the Carrier informed Mr. Mazotti on June 10, 1985, that he could return to work.

The Organization contends that Mr. Mazotti was improperly withheld from service as of December 4, 1984, (the date of the doctor's certification). The Carrier contends that its refusal to return Mr. Mazotti to service until the criminal charges pending against him were resolved did not violate the Agreement between the parties, and properly took into account its responsibility for the safety of its employees and its property.

The physician's release is not controlling for this matter; on December 4, 1984, several serious criminal charges were pending against Mr. Mazotti. The Carrier properly considered the gravity of those criminal charges in reconciling the interest of Mr. Mazotti to return to work with the interests of the Carrier's employees, customers and owners. The Carrier's

decision of December 14, 1984, was prudent. There is no basis in the record of this case to conclude that the Carrier acted in an arbitrary or capricious manner, or that the Carrier violated the Agreement.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 23rd day of November 1987.