

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26700  
Docket Number MW-27161

Ronald L. Miller, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Chesapeake and Ohio Railway Company (Southern Region)

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

Trackman L. Graham shall be returned to his position as trackman, he shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service beginning sixty (60) days retroactive from May 2, 1985 and he shall be credited with the appropriate number of days toward vacation qualifying time and Railroad Retirement service (C-TC-291/MG-5264)."

OPINION OF BOARD: The Claimant was injured while on duty as a Trackman in 1981. Following two operations for relief of a herniated disc, Claimant's physician concluded on September 16, 1981, that Claimant had a permanent partial disability. Subsequently, in a settlement of a suit between Claimant and the Carrier, Claimant was paid \$175,000.

In 1985, Claimant's physician advised the Carrier that his earlier conclusion regarding Claimant's physical condition was not correct, that Claimant had made a full recovery from his prior back injury, and therefore, Claimant could return to his duties as a Trackman. Based upon the original diagnosis by Claimant's physician (rather than its own examination), the Carrier concluded that Claimant had a permanent partial disability and that he remained medically unqualified to perform the job of a Trackman.

The Carrier has based its decision in this matter on a 1981 diagnosis that the issuing physician subsequently described as "premature." That diagnosis should not be considered controlling. This Board is not qualified to determine Claimant's condition. Accordingly, Claimant's and the Carrier's physicians shall select a neutral physician who is a specialist in Claimant's condition and that neutral physician shall determine if Claimant is physically qualified to return to work.

FINDING: 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

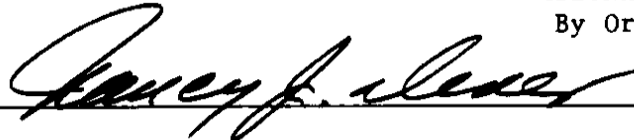
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest"

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

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