

The Third Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Eastern Lines)

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

Machine Operator Helper R. O. Marquez shall be returned to his position as machine operator helper and he shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service beginning February 4, 1985 (System File MW-85-84/432-93-A)." .

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization contends that the Claimant was released for active duty by his personal physician and that the Carrier has arbitrarily withheld the Claimant from service. The Carrier contends that the Claimant's doctor has not released him for return to full service.

In response to a request from the Carrier's Chief Medical Officer, the Claimant's physician wrote on May 23, 1985:

"According to the job description provided with that same letter, I do not think that Mr. Ruben Marquez will be able to maintain sustained work in heavy manual track labor."

Clearly, the Claimant's physician has not released him to return to full duty, even though the Claimant may have reason to think otherwise. The Carrier's Medical Officer is in agreement with the written position taken by Claimant's physician, and has determined that the Claimant does not have the fitness and ability for the purpose of his job assignment. Under these circumstances, it cannot be concluded that the Company has arbitrarily withheld the Claimant from service.

If the Claimant believes that he is fit and able to fully perform his job assignment, a written statement to that effect from Claimant's doctor should be submitted to the Carrier.

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 25th day of February 1988.