Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 26921
THIRD DIVISION Docket No. MW-27521
88-3-86-3-784

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Kansas City Southern Railway Company

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

Track Laborer L. A. Perry shall be compensated for all wage loss suffered by him as a result of being improperly withheld from service beginning July 9, 1985 (System File 013.31-330)."

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 employes 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 were given due notice of hearing thereon.

The Claimant was initially employed by the Carrier on January 24, 1979. For the next two and one half years his employment was mostly regular but otherwise unremarkable. On August 12, 1982, the Claimant, while on the job and under pay, got into an argument with his Foreman over a matter that was not work connected. The Foreman struck Claimant with a blow to the side of his head causing him to fall to the ground where he allegedly hit his head on a tie or some other obstruction. Claimant was given medical treatment. He did not return to work.

In January 1983, the Claimant filed a Federal Employees Liability Act suit against Carrier claiming that he suffered total and permanent disability as a result of the altercation with the Foreman. His suit asserted that Carrier was negligent in placing an individual with known dangerous tendencies in a supervisory position.

The suit was tried before a jury in the first week of March 1985. In the trial Claimant testified that he was unable to work as a result of the altercation. Medical testimony in support of this contention suggested that Claimant's disability was permanent and that there is no medical cure nor

corrective surgery available to relieve the situation. A psychiatrist's testimony stated that Claimant experiences significant depression with suicidal ideations. Claimant's attorney, in his remarks to the jury, stressed his physical condition to be one of total and permanent disability.

The Carrier defended on two primary grounds. It argued that it was not negligent in placing the individual that struck Claimant in a Foreman's assignment. It also disputed the nature and extent of Claimant's injuries and whether they were disabling and permanent. Carrier's attorney, in closing remarks to the jury, expressed the view that Claimant could have, if he wanted to, returned to work within a couple of weeks, at the most, after the altercation with the Foreman.

In its instructions, the Court required the jury to decide whether Claimant had proved that Carrier was negligent before it reached other considerations of comparative negligence, disability or damages. The jury answered "no" to the first issue without making any findings on the other issues. A judgment was entered, under which Claimant took nothing on his complaint and Carrier was allowed to recover its costs in the action.

The Claimant, through his attorney, immediately appealed the decision. The appeal challenged the sufficiency of the evidence supporting the verdict. The appeal also took exception to the Trial Court's instructions to the jury. Four months after the jury verdict, on June 24, 1985, and while the appeal was still pending, the Claimant attempted to return to duty. His return was denied on grounds that he was estopped from claiming that he was now able to work based on his trial testimony that he was totally and permanently disabled. Subsequently, the Appellate Court affirmed the judgment of the District Court.

The Organization argues that Rule 5 of the Agreement was violated when Claimant was denied the opportunity to return to work. It contends that the jury in his FELA trial resolved his claim of total and permanent disability against him and that he received no monetary damages. It points out that Carrier consistently, throughout the FELA trial, maintained that he was capable of performing track laborer's work.

The Organization also argues that in any event the testimony and statements presented in civil actions are not concrete facts but merely opinions based on estimations, possibilities and probabilities. Carrier, it is argued, has never presented an iota of evidence to support its position concerning Claimant's physical condition and that he is now unfit for duty.

The Carrier argues that the evidence is uncontradicted that it is unsafe for the Claimant to perform regular work as a track laborer. It contends that the testimony of Claimant's doctors is conclusive in establishing his physical and mental disability and that none of the four return to "work or school" slips, received in June and July 1985, overcome this evidence. It argues that the Claimant is estopped from now contending that he is fit for duty.

We have examined a number of Awards of this Board as well as those of several Public Law Boards, along with several Federal Court decisions, and conclude that estoppel is proper in instances where some type of monetary recovery is made.

In Second Division Award 1672, the Rule was stated to be:

> "It is not a violation of the Agreement to bring suit against the carrier to recover damages against the carrier. But when the employee alleges permanent disability resulting from the injury and pursues that claim to a final conclusion and obtains a judgment on that issue, he has legally established his permanent disability and the carrier is under no obligation to return him to service."

A similar holding was reached in Third Division Award 13524:

> "In the circumstances found we must conclude that when a Claimant successfully establishes in a suit in the United States District Court that he is permanently injured and disabled, rendering him unable in the future to perform the work of a laborer, and is compensated for lost wages, 'past present and future,' and the Carrier pays the full amount of the judgment pursuant to the judgment rendered in that case, the Carrier is not bound to retain the employe in its service with back pay."

Typical of the Public Law Boards that have had occasion to rule on the issue is Award 10, PLB 1493. There it was stated:

> "There certainly was no time for the claimant to recover from the time of the judgment until the time he requested reinstatement. The 'estoppel' upon which the Carrier relies is a limited application to the general rule that 'a party to litigation will not be permitted to assume inconsistent or mutually contradictory positions with respect to the same matter in the same or successive series of suits.'
>
> In other words, the claimant contended herein and placed testimony on the witness stand that he was physically unfit to work for Carrier, and as a result of that testimony, acquired a judgment in the sum of $100,000.00 from the Carrier.

> Then approximately two weeks later the claimant alleged that he was physically able to work and should be entitled to return to the services of the Carrier. In effect the doctrine of estoppel says 'You can't have it both ways. You either are or you are not.'"

The lead Court decision on this issue in this industry appears to be the decision of the Court of Appeals in Scarano v. Central RR of New Jersey, 203 F 2d 510, which expressed the rule to be:

> "... a plaintiff who has obtained relief from an adversary by asserting and offering proof to support one position may not be heard later in the same court to contradict himself in an effort to establish a second claim inconsistent with his earlier contentions."

Following Scarano we have Jones v. Central of Georgia Ry. Co., 48 L C par. 1856: Wallace v. Southern Pac. Co., 106 F. Supp. 742; Burbank v. Southern Pac. Co. 94 F. Supp. 11; Sands v. Union Pacific Railroad, 148 F Supp. 442; Pendleton v. Southern Pacific Co., 21 LC par. 8683; Chavira v. Southern Pacific Co., 42 LC, Par. 16970; and, Gibson v. Missouri Pac. RR. Co., 314 F. Supp 1211, all of which essentially reached the same result.

The above listed Court decisions along with the above noted Awards have been cited in one or more later PLB or Board Awards. Some of these are: Awards 1 and 2 of PLB 1716; Award 9 of PLB 1795; Award 7 of PLB 2690; Award 7 of PLB 3543; Third Division Award 23830; and, Second Division Award 11187.

In Gibson, supra, what was stated in Third Division Award 13524 was succinctly restated:

> "It is a sound principle that an employee is estopped to assert a right to return to work after pursuing an FELA claim in which he holds out his inability to work and recovers a large sum of money in satisfaction of his claim."

Thus it seems crystal clear that considerable authority exists holding that an employee is estopped from asserting a right to return to work after pursuing an FELA claim under which financial relief is achieved. This, notwithstanding two Awards, First Division Award 22598 and Second Division Award 3837 which produced a different result. [Award 22598 was denied enforcement in the Courts in Jones and Award 3837 followed a financial settlement in which the Carrier sought to obtain a resignation which was abandoned thus implying a recognition that a return to service might well be requested.]

However, authority applying estoppel in situations where financial recovery was not given in an FELA action is less prevalent and, moreover, what little exists is divided. Third Division Award 25800, as we have done here, reviewed the existing state of the issue but concluded:

> "We know of no case where the doctrine of estoppel has been applied when the claimant employe had received no relief through other proceedings.
>
> Limiting our decision strictly to the record that we have, which we are required to do, we find that the Carrier has not proved the doctrine of estoppel to be applicable."

About a year after the above observation was made Award 5, PLB 3897 was released. That Award involved a dispute in which the Claimant lost his FELA suit [for reasons not stated in the record], and withdrew his appeal, after which he sought to return to duty. Award 5, PLB 3897 reviewed some of the same authority discussed in Third Division Award 25800, particularly Third Division Award 6215 and Jones, supra, but without elaborating comment reached a differing result, stating:

> "Given the evidence of record the claim must be denied."

Third Division Award 25800 and Award 5 of PLB 3897 are the only decisions we know of touching on this facet of the estoppel issue.

"Estoppel," of course is a complex legal theory with many manifestations. Scarano, supra, devoted a significant portion of its opinion to a discussion of various doctrines of estoppel. The Court instead of adopting a specific doctrine as controlling fashioned the rule to be:

> "The rule we apply here need be no broader than this. A plaintiff who has obtained relief from an adversary by asserting and offering proof to support one position may not be heard later in the same court to contradict himself in an effort to establish against the same adversary a second claim inconsistent with his earlier contention."

The above quickly became known as the "Scarano rule." In Sands, supra, the Court in extensive comments on Scarano stated:

> "For the purpose of the Scarano rule, it is immaterial how Sands assumed his earlier inconsistent position, whether by pleading or proof. The essential facts are that he assumed it and obtained relief on the basis of it. Since both these facts exist, the Scarano rule applies and Sands is estopped from maintaining in this case that he is physically capable of returning to his old job."

Accordingly, on this record, it is our view that Carrier misapplied considerations of estoppel, as expressed in the Scarano Rule, when it refused to process Claimant's return to duty requests. In this regard we should again point out that at the trial Carrier did argue that Claimant could have returned to duty within two weeks of the incident. Third Division Award 26041 dealt with a similar situation wherein counsel for a Carrier pleaded against a claim for future earnings and held:

> "This Board cannot ignore this testimony, ..."

We would also note that in First Division Award 23812, the Board stated:

> "An estoppel argument based solely on an attorney having filed a FELA Complaint avering that the individual was incapable of any gainful activity is rejected."

Our conclusion that estoppel, as expressed in the Scarano Rule, was misdirected does not automatically mean that Claimant is physically and mentally capable of returning to duty as a trackman. It is noted that the four preprinted forms that Claimant furnished Carrier in an attempt to resume work are faulty. The first two contain just the patient's name and the date being released for duty. Neither is signed by the doctor involved, both merely contain a printed general purpose stamp affixed in the signature area. The second set is signed and contain some additional information. Both, though, limit Claimant's release to light work. These releases, on their face, seem inadequate to require that Claimant be restored to his former position. Accordingly, we do not feel that the release for duty notices Claimant submitted required Carrier to reinstate him to his former position at that time.

Therefore, under the circumstances of this case, if Claimant's doctors are able to now certify to Carrier that he is physically and mentally capable of resuming his employment as a track laborer he shall either be allowed to return to work or be given a normal return to duty examination, whichever Carrier elects. If Claimant is not returned to duty by reason of this examination then a neutral medical panel shall be established, consistent with industry practices, to evaluate Claimant's physical and mental condition for employment as a trackman. The decision of this panel shall be final.

Because of the fact that Claimant's return to work forms do not clearly establish that he was capable of resuming the duties of his job, and the fact that it was his representation that he was totally disabled that caused Carrier to adopt the estoppel argument, the claim for compensation and other benefits is denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.

CARRIER MEMBERS' DISSENT
TO
AWARD 26921, DOCKET MW-27521
(Referee Fletcher)

The Majority's analysis of past Awards of the Board, as well as relevant court decisions, dealing with the subject of estoppel cannot be faulted. The analysis demonstrates that the estoppel doctrine heretofore applied in the overwhelming majority of disputes has been estoppel by judgment. That is, the employee was estopped from claiming that he was physically and mentally qualified to return to work after presenting evidence of permanent disability and obtaining a judgment against the Carrier. The Majority further is correct in finding that there are virtually no prior cases involving the issue of the applicability of the doctrine of equitable estoppel where the employee did not obtain a judgment against the carrier.

Having found no prior precedents, one way or the other, dealing with the subject of the applicability of equitable estoppel, as opposed to estoppel by judgment, we would have expected that the Majority would have turned to a consideration of whether equitable estoppel could be a legitimate defense. Unfortunately, we find no such consideration. Instead, the Majority simply concludes that inasmuch as equitable estoppel had not been involved in past estoppel cases, it could not be raised as a defense in this dispute. There is no basis for such arbitrary conclusion and, indeed, one need look no further than the past precedents cited by the Majority to prove the point.

Thus, the Majority quotes at length from the Scarano case to demonstrate that the court there was dealing with an issue of

estoppel by judgment. The Majority apparently overlooked the portion of the Scarano decision where the court stated (203 F.2d at 512-513):

> "The 'estoppel' of which, for want of a more precise word, we here speak is but a particular limited application of what is sometimes said to be a general rule that 'a party to litigation will not be permitted to assume inconsistent or mutually contradictory positions with respect to the same matter in the same or successive series of suits.' ...Whether the correct doctrine is that broad we do not decide. The rule we apply here need be and is no broader than this. A plaintiff who has obtained relief...may not be heard later...to contradict himself...to establish...a second claim inconsistent with his earlier contention." (Emphasis added)

Thus, the court in Scarano specifically left open the question of whether equitable estoppel could be applied.

Furthermore, while the Board in Third Division Award 25800 stated:

> "We know of no case where the doctrine of estoppel has been applied when the claimant employe had received no relief through other proceedings,"

the Board, likewise cited no case in which the doctrine had not been applied. Furthermore, the Board made it clear in that Award that it was "limiting our decision strictly to the record we have,..." It is obvious that the Board was not deciding the generic issue of whether the doctrine of equitable estoppel could ever be applied.

Finally, the Majority correctly cites First Division Award 23812 as relevant to the issue but then incorrectly ignores the portion of that Award that bears directly on the issue of equitable estoppel. Thus, the Majority quotes from the portion

of the Award which states that any estoppel argument (judgment or equitable) cannot be based "solely on an attorney having filed a FELA Complaint averring that the individual was incapable of any gainful activity...." In our case, the Carrier did not rely upon the FELA Complaint to establish its equitable estoppel argument. Instead, the Carrier repeatedly referred to the testimony of the Claimant and his physicians at the trial that he was permanently disabled from returning to work. In this connection, the relevant portion of the Award is the holding by the Board that,

> "...should (Claimant) testify that he was totally disabled or unable to work for the Railroad for any period of time after July 7, 1982 until his reinstatement, then the Carrier may deduct this period of time from its backpay liability;..."

There is nothing in the Award to suggest that such deduction would be applicable only if the Claimant received a judgment in his favor covering the period. The same result was reached by the First Division in Awards 23840 and 23841.

In summary, we submit that the issue of the applicability of the doctrine of equitable estoppel remains alive and well. A rejection of the doctrine solely because it is not identical with the doctrine of estoppel by judgment is erroneous.

Finally, we believe it appropriate to comment that a review of the handling of the dispute by the Organization on the property shows that its sole defense to the Carrier's estoppel argument was based upon its position that regardless of the testimony of the Claimant and his physicians at the trial concerning his permanent disability, the doctrine of estoppel should not be applied because the Claimant was no longer

disabled. The argument of "miraculous recovery" has, of course, been repeatedly rejected by the Board in estoppel cases. Indeed, the handling of the dispute on the property shows that the Organization never alleged, let alone argued, that the Claimant had lost his FELA action and that there was any significance in that fact. Since neither the facts nor the arguments concerning the issue surfaced during the handling of the Claim on the property, the Majority, in accord with a legion of prior Awards, should have denied the Organization's belated attempt to raise the issue at the Board level.

We are confident that should the issue of equitable estoppel arise in a future case, where the parties have an opportunity to fully explore the doctrine, and the Board has the opportunity to fully evaluate the issue, that the doctrine will be upheld.

M. W. FINGERHUT

R. L. HICKS

M. C. LESNIK

P. V. VARGA

J. E. YOST

LABOR MEMBER'S RESPONSE
TO
CARRIER MEMBERS' DISSENT
TO
AWARD 26921 - DOCKET MW-27521
(Referee Fletcher)

The Carrier Members' Dissent discloses at least two (2) basic errors in reasoning and conclusion. The analysis of past awards, as well as relevant court decisions, dealing with the subject of estoppel found in Award 26921 can be faulted. Moreover, the Carrier Members' conclusion that, because a cursory search for precedent dealing therewith bore little fruit, it must not exist, is somewhat reminiscent of the poet who, upon the falling of a tree in the forest, questioned whether it made a sound because there was nobody there to listen to its demise. The Carrier Members would have it that because ample precedent wasn't found, this Board should have rushed headlong into the business of setting up its reasons for legitimizing the Carrier Members' defense in the instant case.

It is apparent that the Carrier Members' position is based entirely on the doctrine of equitable estoppel, which is by definition a defense based on equity. This Board has no authority to apply its subjective notion of equity, but is instead restricted to interpreting and applying the terms of the collective bargaining agreement. In this connection, we invite particular attention to First Division Award 19276 and the extremely lengthy Labor Members' Supporting Opinion. Inasmuch as the Labor Members' Opinion (discounting the award and Carrier Members' Dissent) grew to 115 Pages, rather than attaching it hereto, we will briefly touch on the application thereof to the case at hand.

Therein, the Labor Members establish that there are actually three manifestations of the doctrine of estoppel to be considered. First, there is the doctrine of collateral estoppel, or as the Carrier Members chose to call it, estoppel by judgment. Second, there is the doctrine of equitable estoppel, which the Carrier Members chastised the Majority for ignoring. Third, there is the doctrine of estoppel by record, which was, without saying as much, applied in the case decided by Award 26041.

With regard to the first, the Carrier Members point out that the Majority quoted at length from the Scarano case (which it is noted was quoted from by the Carrier Members with deft editing) and conclude that the Court implied that the question of whether the doctrine of equitable estoppel had been left open. However, the Scarano decision, when read without editing, reached a quite different conclusion. The fact is that in Scarano, the Court very precisely limited its decision to the question of the applicability of the collateral estoppel rule, in that case. A review thereof discloses a purposeful exclusion of any broader issue. It was clearly the intent of the Court to preclude the sort of implications now raised by the Carrier Members in their dissent. However, this is nothing new, as was shown by the Labor Members in their afore-mentioned Supporting Opinion at Page 84. In any event, the collateral estoppel rule is inapplicable in cases such as this simply because the rule applies in successive suits IN THE SAME COURT.

With regard to the second, assuming, arguendo, that the doctrine of equitable estoppel could be considered by this Board, the Carrier would have had the burden of proving the essential elements of estoppel. The Carrier

has clearly failed to bear this burden. Neither the civil trial or the resulting verdict addressed the issue of the Claimant's seniority rights under the collective bargaining agreement. Therefore, in order to apply the doctrine of estoppel it would be necessary to (1) conclude that the jury found the Claimant to be permanently disabled from performing railroad work and compensated him for such disability and (2) that in light of such finding and the compensation it would not be equitable to allow the Claimant to return to service when he became physically able to do so. For reasons which we will develop fully in subsequent paragraphs, it cannot reasonably be concluded that the jury found the Claimant to be permanently disabled from railroad work. However, even if such a conclusion could be logically drawn (and it cannot) the fact remains that awards so numerous as to preclude the necessity of citation have held that this Board is not a court of equity and is prohibited from ruling on the basis of equity.

The simple fact is that the Claimant's seniority rights under the collective bargaining agreement are separate from and unaffected by the Claimant's civil action under the Federal Employers' Liability Act. The only possible connections between the two is a subjective notion of equity which is not within this Board's authority to consider (First Division Awards 19276 and 20023).

As this Board recognized in Second Division Award 3837, in order for an equitable estoppel to exist three (3) elements must necessarily be present:

(1) A material misrepresentation of fact.

(2) Reliance thereon by the other party.

(3) A resultant damage to said party.

The Carrier has failed to show that any one of the three (3) necessary elements of equitable estoppel are present in this dispute. The Carrier has never alleged, much less proven, a misrepresentation of fact by the Claimant, his attorney or witnesses who testified on his behalf. With respect to the Carrier's contention that the Claimant testified and produced medical testimony that he suffered injuries that permanently incapacitated him from performing railroad work, we have two (2) observations: (1) the testimony of the Claimant and medical experts did not deal with matters of fact, but of opinion and probabilities, (2) there is no evidence that the Claimant or the medical experts who testified on his behalf misrepresented their opinions of the Claimant's physical condition. Hence, it is clear that the Carrier has not established a misrepresentation of fact. It is therefore equally clear that the Carrier has failed to meet the first necessary condition of its affirmative estoppel defense (First Division Awards 15888, 17645 and 18205).

Assuming the Carrier had established a material misrepresentation of fact by the Claimant (which it clearly has not), the Carrier would then be required to establish that the jury relied upon that misrepresentation, determined that the Claimant was permanently disabled from railroad work and awarded the Claimant compensation for that permanent disability from railroad work. The Carrier clearly has not met or even attempted to meet its burden of proof on this issue. The Carrier has simply stated that despite the verdict, the Claimant's testimony itself is evidence of a finding of permanent disability from railroad work. This Board has no authority (or, we trust, extra sensory perception) to divine what changes the Claimant's condition may have undergone in the interim. This is important because, in

order to prove the second element of the estoppel rule, the Carrier must have shown that it relied on the Claimant's assertions and acted on them, i.e., the Carrier must have paid the injury claim. This, it did not do. Consequently, the Carrier could not possibly have proven the second element.

With respect to the third element of estoppel, i.e., a resultant damage or prejudice, the Carrier has failed to present any evidence to show it would suffer damage by allowing proper medical examination of the Claimant and allowing him to return to duty in accordance with his physical ability. The Claimant had his day in court and the jury refused to find in his favor. That issue is now history. The present reality in that the Carrier has work to be performed and if the Claimant is found to be physically able, he is entitled to perform that work in accordance with his seniority. The only "damage" that the Carrier would suffer is the loss of its retaliatory revocation of seniority whenever an employe is successful in obtaining compensation for injuries under the FELA. Obviously, such is not the type of damage or prejudice contemplated by the doctrine of estoppel (First Division Award 17645).

We have clearly shown that the doctrine of estoppel has no application to this dispute and that even if it did, the Carrier has failed to meet its burden of proof with respect to the three (3) necessary conditions of estoppel. We believe that the reasoning and award citation above are more than ample to refute the limited argument. However, should this Board have any question with respect to the validity of our reasoning or the reasoning in the awards cited above, we invite special attention to Labor Members' Supporting Opinion (First Division Award 19276).

With regard to the doctrine of estoppel by record, the Labor Member believes that, if any of the manifestations of estoppel are applicable, which is not conceded here, perhaps it is this. In the case decided by Award 26041, the trial attorney for the railroad was found to have argued persuasively at trial on his client's behalf that the claimed injury in that case was not disabling. This Board held that such testimony could not be ignored and that the carrier therein had violated the agreement by withholding the claimant from duty. As was pointed out to this Board by the Organization, Award 26041 was foursquare in point with this case.

In the final analysis, the best case against the applicability of all three manifestations of the doctrine of estoppel discussed herein was made by the Labor Members in the Supporting Opinion to First Division Award 19276. The Labor Member is unaware of a more comprehensive, well reasoned and well researched treatise on the issue at hand. The logic of the Labor Members is unimpeachable. Instead of attempting to "reinvent the wheel", I adopt the reasoning of the Labor Members' Supporting Opinion in First Division Award 19276 as applicable here.

D. D. Bartholomay
Labor Member

CARRIER MEMBERS' REPLY
TO
ORGANIZATION'S RESPONSE
TO
CARRIER MEMBERS' DISSENT
TO
AWARD 26921, DOCKET MW-27521
(Referee Fletcher)

At the outset, we express our appreciation to the Organization for confining its Response to six pages. The Supporting Opinion in First Division Award 19276 cited by the Organization drones on for 115 pages. We hope the Organization will forgive us if we do not rush to read it immediately.

In any event, the Organization is intent upon arguing the merits of whether the doctrine of equitable estoppel is applicable in disputes coming before this Board where an employee seeks reinstatement following a court trial in which he and his physicians testified that he was permanently disabled. The Carrier argued its position before the Board and, as our Dissent clearly demonstrates, the Board erroneously failed to decide the issue. There is no point in arguing the issue here. Instead, we will await the next instance where the issue arises. We suggest to the Organization that it file its Response in a place that will make it available in the next case. We also make a fervent appeal to the Organization that if it intends to rely upon the Supporting Opinion in First Division Award 19276, that it do all concerned a favor, i.e., the members of the Board and the Referee, by pointing out the particular portions it believes relevant. A 115 page concurring opinion should not be read as a matter of principle!

Incidentally, First Division Award 19276 itself has nothing to do with the doctrine of equitable estoppel.

M. W. FINGERHUT

R. L. HICKS

M. C. LESNIK

P. V. VARGA

J. E. YOST