

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27846
Docket No. MW-26684
89-3-85-3-432

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(St. Louis Southwestern Railway Company

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

Carpenter S. E. Swaim, Jr. shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service June 19, 1984 to September 24, 1984 (System File MW-84-31-CB/53-745)."

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 waived right of appearance at hearing thereon.

The Claimant was recalled from furlough status by letter dated June 11, 1984, in order to fill a B&B Carpenter vacancy. As so required, a back-to-work physical examination was given to him. After review of the information furnished by the examining physician, Carrier's Chief Medical Officer determined that Claimant would be withheld from his return to duty.

Subsequent to that determination, the Organization filed two separate Claims on behalf of Claimant. The first Claim was the result of Claimant being withheld from service as B&B Carpenter from the period June 20, 1984 - September 19, 1984. The second Claim was the result of Claimant not being recalled to service as a #1 Painter for the period beginning June 18, 1984.

Third Division Award 26950 ruled on these same issues. It involved this Carrier, the Organization and the Claimant's brother. There, the Board stated:

"Accordingly, we believe a violation of the Agreement occurred. However, the remedy is limited since the Claimant agreed to a settlement for lost wages between July 9 and September 24, 1984, in connection with a U.S. Department of Labor complaint. Therefore, the Claimant is entitled only to lost wages from June 18 to July 9, 1984."

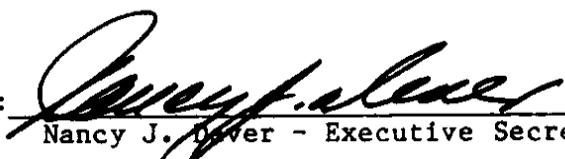
We view Third Division Award 26950 as dispositive.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dwyer
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.