

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

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

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

(1) Laborer C. E. Flanagan shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service from July 15, 1985 to October 31, 1985 (Carrier's File 013.31-337)."

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.

Claimant was furloughed on February 15, 1985. In July 1985, he was called back to work and, in the usual manner, was directed to take a return-to-work physical examination that included a drug screen. The drug screen revealed positive concentration of marijuana in his system. Claimant was not allowed to return to work and was scheduled for another test. He failed the second test. Eventually, Claimant decided to enroll in a substance abuse program and in December 1986, he was released and tested clean. He was ordered back to work on January 7, 1987.

The Organization submitted a claim alleging that Carrier improperly held Claimant out of service from July 15, 1985, to October 31, 1985. It asked for pay for all lost time.

This Board has reviewed the record and it concludes that Carrier acted in an appropriate manner in this instance. Claimant received every consideration possible from Carrier and at no time were his Agreement rights violated in any manner. Carrier was more than tolerant. Claimant, by his own admission, had a drug problem. When he did something about it, Carrier returned him to service. Neither Claimant nor the Organization could expect any more.

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Award No. 27968  
Docket No. MW-27440  
89-3-87-3-124

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 29th day of June 1989.