

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(CSX Transportation, Inc. (former Chesapeake and  
( Ohio Railway Company)

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

(1) The Carrier improperly withheld Trackman J. Gardner from service on April 8, 9, 10, 11, 14, 15, 16 and 17, 1986 (System File C-TC-2898A/MG-5676).

(2) The Carrier shall now allow Trackman J. Gardner sixty-four (64) hours of pay at his straight time rate."

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 had been on furlough more than 90 days, accordingly he was required to submit to a physical examination prior to return to work. After a February 13, 1986, physical examination Claimant was notified a re-examination would be necessary due to the presence of cannabinoids.

The Organization contended Claimant was re-examined on March 19, 1986, but that the lab did not pick up the sample. On April 8, 1986, Claimant attempted to make a displacement but learned he had not been cleared medically. He then submitted a urine sample on April 9, which proved negative. On April 18, he was so advised and he returned to work on April 19. The Claim is for the period from April 8, when Claimant allegedly learned he had not yet been medically cleared until his return to work.

In a July 15, 1986, letter to the Organization, the Director of Labor Relations denied any record of a March 19, test or any failure on the part of the lab to collect samples. No further evidence regarding the alleged test was submitted on the property.

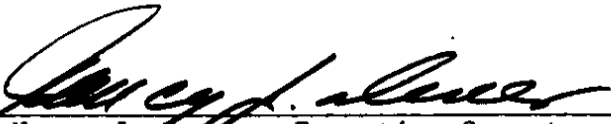
As no evidence was adduced in support of the contention that a test was made on March 19, and as we have consistently held a mere assertion does not constitute proof we must deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 10th day of August 1989.