

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29571  
Docket No. MW-29276  
93-3-90-3-172

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to timely recall Mr. H. A. Johnson from furlough and return him to work in accordance with his seniority beginning April 3, 1989 [System File C-TC-4862/12(89-464) COS].

(2) As a consequence of the aforesaid violation, Mr. H. A. Johnson shall be compensated for all straight time and overtime wage loss suffered beginning April 3 and continuing through May 1, 1989 and he shall be allowed appropriate credits for vacation qualifying purposes."

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 employe 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 in furlough status. Having provided the notice requirement in Rule 5(a), he was eligible for recall in seniority order to permanent vacancies under the provisions of Rule 5(c).

The Organization and the Carrier are parties to a February 20, 1986 Letter of Agreement, reading in pertinent part as follows:

"5) Insofar as future examinations [for return to duty] are concerned, employees will be apprised of the necessity of such examinations....They will also be furnished with a list of the Carrier's examining physicians with advice that they should arrange for a physical examination (including drug and alcohol screening) with one of those physicians during January and February of the following year...."

In connection with its planning to recall a large number of employees for 1989, the Carrier failed to furnish the Claimant the above reference medical forms in January or February. When the Claimant learned that employees junior to him had been recalled, he took on his own responsibility to obtain medical forms. He was examined on April 20, 1989, and notified on April 29, 1989, that he was qualified to return to duty. In the meantime, junior employees had commenced work on April 3, 1989.

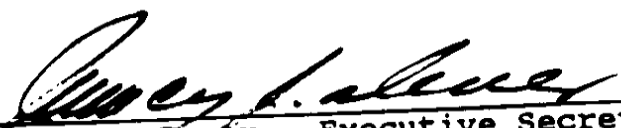
The Board finds no problem with the Carrier's assertion that it utilizes junior employees pending medical qualification of more senior employees. Here, however, the Claimant was not afforded the opportunity encompassed in the February 20, 1986 Letter of Agreement. While his Claim cannot be sustained for the period between April 20 and April 29 (while he was awaiting examination results), the Claim covering April 3 to April 20 has merit.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.