

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30018
Docket No. MW-30117
94-3-91-3-547

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

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

- (1) The Agreement was violated when the Carrier withheld Trackman J. Burch from service beginning July 9 through 13, 1990 [System File C-TC-7098/12(90-1022) CON].
- (2) The Agreement was violated when the Carrier withheld Trackman R. Kaczmarczyk from service beginning July 23 through 27, 1990 [System File C-TC-7080/12(90-962) CON].
- (3) As a consequence of the violation referred to in Part (1) above, Trackman J. Burch shall be allowed forty (40) hours' pay at his trackman's straight time rate of pay.
- (4) As a consequence of the violation referred to in Part (2) above, Trackman R. Kaczmarczyk shall be allowed forty (40) hours' pay at his trackman's straight time rate of pay."

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.

In January 1990, the Carrier sent its furloughed Maintenance of Way employees the necessary forms for obtaining return-to-work physical examinations. This mailing was in anticipation of the force build up for the spring production season. Although the Claimants received these forms, they did not take their physical examinations, nor were they recalled in the spring.

Claimant Burch was sent a recall letter on June 29, 1990, advising him to report for service on July 9, 1990. It appears from the record that the Claimant then arranged to take his return-to-work physical. When he reported for duty on July 9, 1990, however, he was told to return home until the physical was approved by the Carrier's Medical Department. Claimant Burch commenced service on July 16, 1990.

Claimant Kaczmarczyk was notified on July 13, 1990, to report for service on July 23, 1990. He scheduled his physical for July 20, 1990, but was not permitted to begin work until July 30, 1990, after his physical was approved.

This claim seeks compensation for the Claimants for the time between the date they reported for service as directed and the date upon which they actually commenced work.

In addition to the Rules governing the recall of forces, the parties have an Agreement dated July 29, 1988, identified as CSXT Labor Agreement 6-076-88, which governs the identification, evaluation, and rehabilitation of employees who use drugs and/or alcohol while subject to or on duty. Section 3 of this Agreement provides as follows:

"Drug and alcohol urine screening also shall be required as part of a reinstatement physical examination. Also, any employee furloughed continuously for more than ninety (90) calendar days may be required to take a return to work physical prior to his or her return to work. Such employees will be so notified using the Notice attached hereto as Appendix D. If the employee, because of previous CSXT instructions, has previously taken and passed a physical within sixty (60) days of the return to work date, then the employee will not be required to repeat the physical."

Appendix D is a notice to the employees advising them of the need for a physical examination prior to returning to work. It is

this notice that the Claimants received in January 1990. The notice reads as follows:

"This letter will serve as formal notice of your requirement to submit to a physical examination prior to your return to work pursuant to Section 3 of the Agreement concerning drug and/or alcohol testing between CSX Transportation, Inc., and its employees represented by the Brotherhood of Maintenance of Way Employees.

Please arrange to promptly secure an appointment for the required examination from one of the physicians on the enclosed list in order to complete your return to work physical examination. The enclosed form MED-2 must be furnished to the examining physician at the time of the examination. You may be required, as part of this physical examination to provide the necessary urine samples to the examining physician/medical facility for testing of drugs and/alcohol. All drug and/or alcohol testing and the results thereof shall be handled in accordance with the provisions of Section 4 and urine samples shall be obtained from the employees in accordance with the procedures set forth in Appendix 'C' of the Agreement referred to hereinabove.

Only employees furloughed continuously for more than ninety (90) calendar days and those who have not taken and passed another CSXT special or return to work physical examination by the medical department within this current furloughed period will be required to submit to this physical examination. If you have previously completed a CSXT special or return to work physical examination within this current furloughed period, please fill out the attached form and return it to CSXT."

The Carrier argues the Claimants had an opportunity to take their physicals prior to being recalled. Had they done so, the Carrier asserts they would have been prepared to return to work on the dates stated in their recall notices. During the handling of this dispute on the property, however, the Carrier conceded the Claimants would have been required to take a second physical had

their first examinations been more than three months prior to their recall.

Given the applicable Rules, this Board finds that even if the Rule governing the recall of forces required the Carrier to start employees on the first day of the recall, that requirement would have been superseded by Section 3 of Agreement 6-076-88. Under that Agreement, the Carrier has the right to examine furloughed employees who have been recalled to service. That right carries with it the right to withhold an employee from service until it is determined he or she had successfully completed the examination. The Board in numerous past Awards has recognized that the Carrier has an obligation to process examinations expeditiously, avoiding unreasonable delay. We find no such delay in this case. The Agreement, therefore, was not violated.

The Carrier had no obligation to allow the Claimants to take their physical examinations as early as January. This obviously is done for the employees' convenience, allowing them to begin work as soon as the jobs go on. The Carrier benefits, as well, by having a ready work force when the production season starts. This system seems to be adequate for employees who get recalled in the spring. In the Claimants' case, however, an early examination probably would have been useless because they would have been required to submit to a second examination.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.