

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 30187

Docket No. MW-28923

94-3-89-3-328

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

1. The Agreement was violated when Messrs. J. D. Buck and H. E. McAfee were not returned to service in accordance with their seniority on April 18, 19, 20, 21, 25, 26, 27, 28 and May 2, 1988 (System Docket CR-3805.)
2. As a consequence of the aforesaid violation, Messrs. J. D. Buck and H. E. McAfee shall each be allowed pay for all straight time and overtime wage loss suffered, beginning April 18 and continuing through May 2, 1988."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On April 6, 1988, both Claimants, who were in a furloughed status at the time, submitted bids on positions that had been advertised on Bulletin #18 dated April 6, 1988. On April 15, 1988, the award was posted stating both Claimants had been awarded positions effective April 18, 1988. The original advertisement indicated, in part, "Please arrange to take a return to duty physical as soon as possible if furloughed and returning to service. Physical must be taken at least seven days prior to your return to duty."

The Claimants contacted the Division Engineer's office on April 18, 1988, to determine why they hadn't received the forms necessary to take the physical exam (Form MD-40). They were told the forms had been mailed already. One of the Claimants called on the 19th and was told they would be mailed that day. He called on the 22nd only to be told they were mailed the 21st. He received his forms on the 23rd and had his physical on April 25. He then had to wait seven days before he could work. The other Claimant's experience was essentially the same.

The Board notes that there is no contract language requiring the Carrier to provide furloughed employees copies of the MD-40 when they are recalled or sent advertisements. Thus, the individual bears the primary responsibility to secure the form and get the physical so they can present themselves as available for service.

In this case, the Claimants attempted to secure the forms on April 18, but basically got the run-around until April 23 when the form finally showed up. They were not mailed on the 15th as the Carrier had indicated, but were mailed on the 21st. The Board sees no reason why the Claimants could not have been given copies of the forms on the very day they inquired. Had the Carrier proceeded with due diligence, the Claimant's return to service would have been expedited. The fact that it was not, caused them to lose wages.

Accordingly, the Board orders that the Claimants be compensated for lost wages at the applicable rate between April 18 and April 23 (inclusive of each date). The record shows that the gang worked four days during this period.

A W A R D

The Claim is sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____

Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.