

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31363  
Docket No. MW-31971  
96-3-94-3-323

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

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

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

- (1) The Agreement was violated when the Carrier improperly withheld Mr. F. L. Seafuse from service beginning January 4, 1993 without just and sufficient cause (System Docket MW-2919).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant F. L. Seafuse shall be compensated for all wage loss suffered as a result of the Carrier's actions."

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.

Claimant, who had a known hearing impairment, was not allowed to displace onto a Class 2 Machine Operator's position until after he was given a hearing examination to insure his own safety and that of others. Following the examination, Claimant was fitted with an amplification device (paid for by the Carrier) and was permitted to return to duty. The Organization contends that Claimant was wrongfully withheld from service between January 4, 1993, and January 19, 1993.

The Organization is in error. Carrier is privileged to withhold employees from service when it has a valid basis for believing that they are sufficiently impaired so as to present a potential hazard to themselves or others. And when it is actually determined, as in this case, that the employee is actually impaired and required a hearing appliance to work safely, Carrier is relieved of responsibility for any wage loss occurring during the time withheld from duty, so long as it acted in good faith and with prompt dispatch.

The claim is without merit.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of February 1996.