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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33211
Docket No. MW-32545
99-3-95-3-450

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. M. MacKinnon from his assigned position beginning May 16, 1994 and continuing until he was released on June 17, 1994 and thereafter permitted to return to service (System File C- 11-94-D260-01/8-00202 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. M. MacKinnon shall be compensated for all wage loss suffered, i.e., one hundred eighty-four (184) hours' pay at his straight time rate, twelve (12) hours' pay at his time and one-half rate and eight (8) hours' holiday 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 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 were given due notice of hearing thereon.

The issue in this dispute is whether the Carrier timely returned the Claimant to duty following a physical disability. There is no dispute that on April 28, 1994, Claimant's physician approved Claimant's return to service. There likewise is no dispute that on April 28, 1994, the Carrier's Chief Medical Officer (CMO) wrote to the Claimant's doctor requesting additional information. What is in dispute is what happened next. According to the Organization, the Claimant's physician wrote to the Carrier's CMO on May 10, 1994, providing the information requested. The Carrier's CMO states that he did not receive such report until June 10, 1994, when the Organization faxed and mailed a copy of the report to the CMO. The CMO approved Claimant's return to work on June 13, 1994. The Claimant was advised of his immediate release to return to duty and the Claimant stated that he would report on June 20, 1994 which he did.

The Organization has the burden of proving that the report of the Claimant's physician dated May 10, 1994 was delivered to the Carrier around that date. The Organization did not produce either a registered mail certificate or a certified mail certificate which would show that the report was received by the Carrier prior to June 10, 1994. In fact, the Organization has no direct knowledge of when the Claimant's doctor mailed the report in question because the Organization did not mail that report or witness its mailing.

AWARD

Claim denied.

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ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of April 1999.