

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37417
Docket No. MW-37020
05-3-01-3-648

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Canadian Pacific Railway (former Delaware and
(Hudson 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 reinstate Mr. C. Conklin to service beginning May 3 and continuing through June 5, 2000 (Carrier's File 8-0162 DHR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Conklin shall now be compensated for all lost time beginning May 3 through June 5, 2000 and he shall have all rights, benefits and credits restored.”

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.

During a return from furlough physical examination given to the Claimant on April 10, 2000, medical concerns were detected which, in the opinion of the Carrier's Chief Medical Officer, required further evaluations by the Claimant's primary care physician, a general surgeon and an orthopedist. The Claimant's primary care physician released the Claimant on May 3, 2000. The last release to come in was from the Claimant's orthopedist, which was received by the Carrier on June 1, 2000. The Claimant was permitted to return to work on June 5, 2000.

The evidence does not sufficiently demonstrate that the delay in returning the Claimant to work was the Carrier's fault. The Claimant was permitted to return to work upon receipt of further medical evaluations, which were not complete until the Carrier received information on June 1, 2000 that the Claimant's orthopedist also released him to return to work. The Claimant was then returned to work in a reasonably timely fashion on Monday, June 5, 2000 (after an intervening weekend).

This claim shall be denied.

AWARD

Claim denied.

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 22nd day of March, 2005.