

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39955
Docket No. MW-40479
09-3-NRAB-00003-080327**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
(National Railroad Passenger Corporation (Amtrak) –
(Northeast Corridor

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier withheld Trackman M. Edwards from service on January 23, 24, 28, 29, 30, 31 and February 1, 2007 (Carrier's File NEC-BMWE-SD-4653 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Edwards shall now be compensated ' . . . for all straight time hours and any and all overtime hours Rule 55 - PREFERENCE FOR OVERTIME WORK, that were worked while Mr. Edwards was arbitrarily withheld from service on the dates referenced above.”**

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.

On the dates that are subject of this claim, the Claimant was employed as a Trackman on Gang S-096, headquartered at Groton, Connecticut. On the dates in question, the gang was assigned to perform work on the drawbridge at Shaw's Cove. The Claimant had notified the Carrier that he was afraid of heights and unable to work on bridges or otherwise at heights. The Carrier asked the Claimant to provide medical documentation of his condition, which the Claimant did. Based on that documentation, the Claimant was medically disqualified from jobs that require working at heights.

In light of the Claimant's documented medical condition, the Carrier certainly did not act arbitrarily or unreasonably in withholding the Claimant from service on the dates in question. Despite the Organization's protests to the contrary, there is no Agreement Rule that required the Carrier to find other work for the Claimant to do in these circumstances.

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 30th day of September 2009.