

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41595
Docket No. MW-41798
13-3-NRAB-00003-120036**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier continued to withhold Mr. A. Diaz from service following the medical release for return to duty on July 27, 2010 (System File RC-1032S-501/1541025 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Diaz shall ‘. . . now be compensated for net wage loss, straight time and overtime, including any and all benefit losses suffered by him from July 27, 2010, and continuing until such time as he is returned to the service of the Carrier.’”**

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 Organization filed the instant claim on behalf of the Claimant alleging that the Carrier violated the parties' Agreement when it continued to withhold the Claimant from service following the submission of a medical release for return to duty on July 27, 2010.

The Organization contends that the claim should be sustained in its entirety because (1) the record is devoid of any medical evidence that would support the Carrier's decision to withhold the Claimant from duty after his release by his personal physician (2) there is no merit to the Carrier's attempts to justify its decision to withhold the Claimant from duty (3) the only basis offered by the Carrier was a non-medical observation by an unnamed Carrier Officer, and (4) the Claimant is entitled to the requested remedy. The Carrier counters that the claim should be denied in its entirety because (1) the Organization improperly amended its claim (2) the Claimant's return to duty was handled in accordance with established policy and in a fair and impartial manner (3) the Organization failed to establish that the Carrier violated the Agreement, and (4) there is no support for the Organization's remedy claim.

Initially the Board reviewed the procedural arguments raised by the Carrier and finds them to be without merit.

With respect to the merits, the Board finds that the Carrier violated the Agreement when it failed to return the Claimant to service after July 26, 2010. The record reveals that the Claimant had been released to return to duty by his personal physician on July 27, 2010. The Carrier contended that the Claimant was not able to work effectively or safely, but there was no medical evidence to support the Carrier's position. It is well settled that a Carrier must return an employee back to work if that employee has been medically released to return to work with no limitations. The Carrier produced no evidence that justified the Claimant's not returning to work after July 26, 2010. The Claimant was finally returned to work several weeks later, but it is clear that the Claimant is entitled to pay for that period of time.

For all the above reasons, the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of March 2013.