

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42277
Docket No. MW-42557
16-3-NRAB-00003-140227

The Third Division consisted of the regular members and in addition Referee Louis V. Imundo, Jr. when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly removed and withheld Mr. J. Esser from service beginning on January 7, 2010 and continuing (System File C-10-P018-23/10-10-0259 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Esser shall ‘. . . be paid for all straight time and overtime at the appropriate rate of pay for every day that the Claimant has been improperly withheld from service beginning January 7, 2010, and continuing until he is returned to work. I am also requesting that the Claimant be given credit for all days for which qualifying days are required, such as vacation qualifying days as settlement of this claim.”

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 Carrier did not have good and sufficient reason(s) to have waited as long as it did to return the Claimant to service. Accordingly, the Claimant is entitled to 35 days at the straight time rate of pay in effect at the time.

AWARD

Claim sustained in accordance with the Findings.

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 21st day of April 2016.