

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44108
Docket No. MW-44291
20-3-NRAB-00003-170353**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (Former Missouri Pacific)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s failure to timely permit Claimant J. Baker the ability to exercise seniority following his return to service medical examination was arbitrary, unjust and constituted a violation of the Agreement (System File UP503JF16/1652216 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall compensate Claimant J. Baker eighty (80) hours of straight time pay and any and all overtime missed between January 16 and 23, 2016, any other lost compensation, payment for completed rules testing, training and physical examinations, as well as any missed credits for vacation and retirement.”**

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.

Claimant J. Baker established and maintained seniority in the Carrier's Maintenance of Way Department. On January 6, 2016, the Claimant was medically examined pursuant to the Carrier's return to work policy. Thereafter, on January 25, 2016, the Carrier informed the Claimant he was medically clear to return to service. Nineteen (19) days transpired between the date of the examination of the Claimant on January 6, 2016 and when the Carrier finally cleared him to return to work January 25, 2016. This delay resulted in the Claimant being unable to commence working as a mechanic on Gang 1862 during its T-2 alternative compressed work period on January 16, 17, 18, 19, 20, 21, 22 and 23, 2016. Instead the Claimant was to commence working at the start with the Gang on February 1, 2016.

The Organization filed a claim on behalf of the Claimant by letter dated February 22, 2016. The Carrier thereafter denied the claim and the matter was handled in the ordinary fashion, including a claims conference on July 27, 2012. The parties could not resolve the matter and it now comes before this Board for final adjudication.

In reaching its decision, the Board has considered the record evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds this Board does not have jurisdiction to enforce an award in this case. Accordingly, the claim must be dismissed.

AWARD

Claim dismissed.

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 11th day of August 2020.