

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44236
Docket No. MW-44143
20-3-NRAB-00003-200456**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to allow Mr. T. Scott to return to his assigned position on September 14, 2015 and instead withheld him from service on September 14, 15, 16, 17 and 18, 2015 (System File S-P-2019-G/11-16-0077 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Scott shall be paid forty (40) hours' pay at the applicable mechanic straight time rate.”**

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 August 31, 2015, the Claimant verbally requested a leave of absence, less than fifteen calendar days, from his immediate superior to recover from a minor ankle sprain. The supervisor approved the request. The Claimant was away from work September 1, 2015 through September 13, 2015. The Carrier was notified with by its Medical Department that the Claimant was medically cleared to return to work without restrictions as of September 14, 2015. The Organization alleges the Carrier did not allow the Claimant to return to work until after September 18, 2015. It views this delay as unjust, unwarranted and deserving of compensation.

The Carrier counters that it has the inherent right to ensure that its employees are fit to work. It contends it only required the Claimant to fill out a Return-to-Work short form. According to the Carrier, this form was sent by BNSF on September 14, 2015, and was not signed by the Claimant until September 17, 2015. The Carrier says it was received the next day. Manpower did not deny the Claimant his opportunity to work since he was approved by medical to return to work on September 14, 2015. The only reason for the delay between then and September 18 was the Claimant's failure to return his signed Return-to-Work form. The Carrier concludes that the Claimant is not entitled to compensation for this time.

We find no basis in the evidence for faulting the Carrier for the Claimant's delayed return to work. All the Claimant had to do was fill out the short form and he delayed doing this. The Carrier cannot be expected to approve the form until it is received.

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 23rd day of October 2020.