

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44539
Docket No. 45819
22-3-NRAB-00003-200138**

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: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when Mr. R. Strout was unreasonably withheld from service beginning on September 13, 2018 through September 19, 2018 (Carrier’s File MW-19-04 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Strout shall now be compensated forty (40) straight time and twenty-five (25) overtime hours at his respective rate of pay.”**

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 R. Strout, has established and holds seniority within the Carrier's Maintenance of Way Department. The Claimant was assigned and working as a trackman on the I&R Maintenance Crew No. 3643 at the time of this dispute.

Prior to the instant claim, the Claimant was serving discipline from events that transpired in the spring of 2018. It is undisputed that the Claimant waived his right to a hearing and that both parties agreed to a forty-five (45) day suspension which would have the Claimant return to work on Thursday, September 13, 2018. It is undisputed that the Claimant's discipline exceeded thirty (30) working days, requiring a return to work physical which he completed on Thursday, August 30, 2018. The Claimant was eventually permitted by the Carrier to return to work on Thursday, September 20, 2018, twenty-one (21) days from the date he took his return to work physical and exactly one (1) week after he was scheduled to return to work, effectively increasing his suspension to a total of fifty-two (52) days.

In response, the Organization submitted a claim by letter dated October 15, 2018. This claim is based on the proper application of Article 26.8 (a) which provides:

"An Employee may be disciplined by reprimand, deferred suspension, or actual suspension without a hearing when the involved employee, his duly accredited representative, and the authorized carrier official agree, in writing, to the responsibility of the employee and the discipline to be imposed."

At issue is whether the Carrier exercised undue delay in returning the Claimant to work. The Organization contends that there was no explainable reason for returning the Claimant to work seven (7) days after the agreed upon return to work date. The Organization cites to precedence holding that anything beyond five (5) days is unreasonable. On the other hand, the Carrier states that the time it took the MRO to complete its report is beyond the Carrier's control and there is no contractual requirement that binds the Carrier to return an employee within a specified period of time. The claim was properly handled by the Parties at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered all the testimony,

documentary 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 the Organization has met its burden.

There is sufficient evidence that Carrier violated Article 26.8 (a) when the Claimant was not returned to work at the end of his suspension. The record establishes that the Claimant submitted to a physical, as required, due to being on suspension in excess of thirty (30) days. The physical took place a week ahead of the date he was due to return to work under the waiver agreement. The Carrier provided no reason why the MRO report took three (3) weeks to issue it. As other boards have held, the MRO is an agent of the Carrier and the Carrier bears responsibility for the Acts of its agents. (See Third Division Awards 12309 and 15385). Absent extenuating circumstances, it would be patently unfair to penalize the Claimant an additional seven (7) days without pay. To do so would effectively extend his suspension beyond the time period to which the parties agreed. Therefore, the Organization's claim shall 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 8th day of October 2021.