

PUBLIC LAW BOARD NO. 2439

Award No. 78
Case No. 78

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western Lines)

STATEMENT
OF CLAIM

- "1. That the withholding of Water Service Mechanic (welder) Hector Guerrero from his rightfully assigned position on the premise of his physical inability to safely perform the duties is in violation of the current agreement.
2. That Claimant Hector Guerrero be allowed compensation for each work day he is withheld from service beginning November 22, 1983, until such time as he is allowed a three-doctor panel examination as provided for in Rule 32 of the agreement."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that claimant had suffered an injury in 1982 and that there were certain restrictions placed on his activities by the Carrier's Chief Medical Officer in July of 1983. There was a dispute with respect to these restrictions in which the petitioner requested that a three-doctor panel be convened to make the final determination. The records indicate that claimant was furloughed from service because of a reduction in forces on October 14, 1983. He was in furlough status for the remainder of that month, as well as for the months of November and December, 1983. He was recalled to service on January 3, 1984, and worked continuously thereafter through the month of February 1984 and is still working to date.

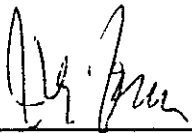
The record of this dispute indicates that claimant was either in a furloughed

- 2 -

status or he was working during the time period in which the petitioning organization is requesting compensation for time lost. Further, the issue of a medical panel is moot due to the fact that claimant has been working since January of 1984 without medical restrictions. For the reasons indicated, there appears to be no violation of any Carrier rules and the claim must be denied.

AWARD

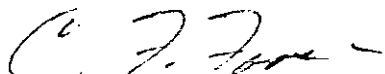
Claim denied.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. F. Foote, Employee Member

San Francisco, CA
October 3, 1984