

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 14
CASE NO. 17

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT
OF CLAIM:

1. That the Carrier violated the Agreement when they withheld Trackman W. W. Sanders from service between the dates of December 7, 1981 and January 5, 1982, said action being unjust and in abuse of discretion.
2. That Claimant W. W. Sanders shall be compensated for loss of earnings, including overtime, suffered account the Carrier's improper action.

FINDINGS :

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Carrier's Exhibit No. 1d, letter of Director of Labor Relations and Personnel, dated July 23, 1982, addressed to the General Chairman, quotes Extra Gang Foreman Kelly and L.L. Mott, saying, in part: "...I told him to get a doctor release before coming to work or talk to Roadmaster Baca. He did not do either one when I was foreman on extra Gang #3."

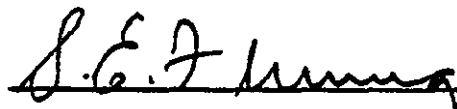
The Organization does not deny that Claimant was told "to get a doctor release or talk to Roadmaster Baca." Clearly, Claimant was not withheld from service on December 7. If it was his choice not to get a doctor release, he could go talk to Roadmaster Baca. His right to go back to work was qualified, however, by the condition that he talk to Roadmaster Baca if he chose not to get a doctor release; but this condition was perfectly reasonable in the light of the circumstances in this case, and the Organization has not questioned it here.

The evidence of record shows that Claimant did not follow the instruction "to get a doctor release before coming to work or talk to Roadmaster Baca." Claimant held himself unavailable for service between the dates of December 7, 1981 and January 5, 1982. His claim is without merit.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The Claim is denied.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


S. E. FLEMING, EMPLOYEE MEMBER


B. J. MASON, CARRIER MEMBER

DATED: April 5, 1983