

PUBLIC LAW BOARD NO. 2960

AWARD NO. ~~54~~ 162  
CASE NO. 250

**PARTIES TO DISPUTE:**

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it did not allow D. E. Gerpen to timely assume his assigned position (Organization File 6LF-2250T; Carrier File 81-87-202).
- (2) Claimant D. E. Van Gerpen shall be compensation 96 hours straight time and 11.8 hours overtime at the applicable rates for a 903 machine operator."

**OPINION OF THE BOARD:**

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

All but one critical fact is undisputed. On April 13, 1987, the Claimant was scheduled for a return-to-work physical at Rapid City, South Dakota. The C&NW Medical Director received the results form the examination on April 28, 1987, and because of comments that the Claimant had made during the examination regarding the tendency of his

right shoulder to dislocate, the Medical Director requested in writing that the Claimant provide additional information regarding whether or not he continued to have such dislocations or if the problem had been surgically corrected. The letter did not request that the Claimant respond in writing. On May 4, 1987, the Claimant contacted the Medical Department and talked to the Secretary and advised her that he was not experiencing any problems with his shoulder.

It is at this point in the chronology that the one dispute in fact arises. The Carrier claims that the Claimant was told to transmit the information concerning his shoulder in writing. The Claimant says that no such instructions were given.

In any event, on June 1, 1987, the ADE-E released Assignment Bulletin 56-A awarding a Class B machine operator position to Claimant Van Gerpen. The bulletin had a stated effective date of June 8, 1987. However, Claimant Van Gerpen was not notified to report to his assigned position on June 8, 1987. After inquiry the Claimant was advised by the ADM-E office on June 12, 1987, that he had not been qualified by the Medical Department. Upon contacting Dr. Cook's office he was advised that he was medically disqualified until such time as he provided a written update of his prior shoulder injury. The Claimant responded to this verbal request by letter dated June 12, 1987, which was received by Dr. Cook's office June 16, 1987. Dr. Cook found Claimant Van Gerpen medically qualified on June 23, 1987, and Claimant reported to his assigned position on June 24, 1987. During the period of June 8 through June 23, 1987, the members of the Rail Gang Claimant

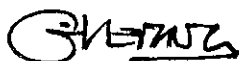
Van Gerpen was assigned to rendered 96 hours straight time and 11.8 hours overtime during his absence.

The issue presented by this case is whether the delay in determining that the Claimant was medically qualified was unreasonable. The key to this question lies in whether the Claimant was told during the May 4 conversation to commit to writing the requested information concerning his shoulder. This was a reasonable request and requirement. If the request was made and the Claimant failed to comply with this request, the delay is attributable to his lack of diligence. If the request was not made, then the Carrier dropped the ball.

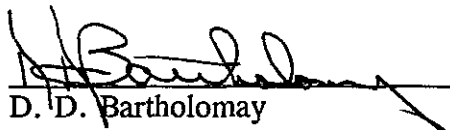
It is the conclusion of the Board that there is no basis to resolve this critical factual dispute. Accordingly, the facts necessary to support the contention that the delay was unreasonable are lacking in this record. We do note that once the Carrier had the information, it took six days to assess it. This is not excessive.

**AWARD:**

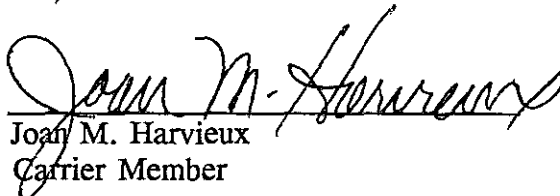
The claim is denied.



Gil Vernon, Chairman



D. D. Bartholomay  
Employee Member



Joan M. Harvieux  
Carrier Member

Dated: 7-25-91