

PUBLIC LAW BOARD NO. 4402

PARTIES)
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it improperly withheld B&B Carpenter J. A. Stewart from service beginning June 13, 1984 (System File #6 Gr./GMWA 84-11-30B).
2. The Agreement was further violated when the Carrier failed and refused to convene a Medical Board in accordance with Rule 41 as requested by the General Chairman in his letter dated September 26, 1984 (System File #6 Gr./GMWA 84-11-30C).
3. As a consequence of the violation referred to in Part (1) hereof, Mr. J. A. Stewart shall be returned to service with seniority and all other rights and benefits unimpaired and he shall be allowed eight (8) hours' pay for each work day beginning July 23, 1984 and continuing until the violation is stopped.
4. As a consequence of the violation referred to in Part (2) hereof, the Carrier shall be required to convene a Medical Board to examine the Claimant in accordance with the provisions of Rule 41 and the Claimant shall be allowed the remedy prescribed by Rule 41E.

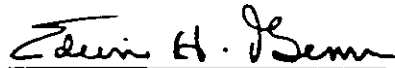
OPINION OF BOARD

At the relevant time, Claimant held the position of B&B carpenter. During the latter part of 1982 Claimant was involved in an on-duty accident and sustained an injury to his ankle. Claimant lost some work time but eventually was able to return to duty. After a routine physical on May 11, 1984, Claimant was determined by the Carrier's physician as not medically satisfactory for employment. A specific area of concern to the Carrier was Claimant's ankle problem. Thereafter, Claimant was withheld from service for being medically unfit for duty. Claims were filed by the Organization protesting the withholding from service and the failure to establish a Rule 41 medical board. Those consolidated claims are now before us.


The claims in this matter allege violations of the Agreement commencing in June 1984. However, on November 21, 1986, Claimant signed a release as part of a settlement of a lawsuit which suit alleged that Claimant sustained severe and permanent injuries to his ankle which injuries would cause loss of future earnings. As part of the settlement, Claimant received \$80,000 for injuries arising out of the 1982 accident. Aside from releasing the Carrier from liability arising out of the accident, the release further stated that "I understand this is a final payment and complete release and includes any claim I may have for time lost." On the basis of the record before us, the allegations in this matter are covered by the release and are barred.

AWARD

Claim denied.


Edwin H. Benn
Neutral Member


E. J. Kallinen
Carrier Member


P. S. Swanson
Organization Member

Denver, Colorado
August 11, 1989