

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

AWARD NO. 143, (Case No. 164)

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION - IBT RAIL CONFERENCE**

vs

**UNION PACIFIC RAILROAD COMPANY (Former Missouri Pacific
Railroad Company)**

William R. Miller, Chairman & Neutral Member

T. W. Kreke, Employee Member

B. W. Hanquist, Carrier Member

Hearing Date: August 17, 2010

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier withheld Foreman W. Anderson from service on July 1, 2008 through July 16, 2008 (System File MW-08-93/1507696).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Anderson shall now '...be compensated for eighty-eight (88) hours at this respective straight time rate of pay and all hours at his respective overtime rate of pay from July 1, 2008 to July 16, 2008....' (Employees' Exhibit "A-1")."

FINDINGS:

Public Law Board No. 6402, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The facts of the case are that Claimant sustained an off-duty injury and was allowed a Medical Leave starting on April 22, 2008. On July 1, 2008, Claimant provided the Carrier a release from his personal doctor indicating he could return to service. Upon receipt of the notification, the Carrier requested, received and reviewed his medical history and returned Claimant to service. Claimant's first day back on the job was July 16, 2008.

It is the Organization's position that the Carrier took an unreasonable amount of time in processing the paperwork and returning the Claimant to work. It argued that in the instant case, the Carrier took seven days to process Claimant's paperwork alone (i.e., July 1 to July 8, 2008), then six more days just to get the notification of the Medical Department's clearance to Claimant (i.e., July 8 to July 14, 2008) and, finally, two additional days to actually put Claimant back to work, subsequent to that tardy processing and notification (i.e., July 14 to July 16, 2008). It closed by requesting that the Claim be sustained as presented.

It is the position of the Carrier that on July 1, 2008, Claimant provided the Carrier a release from his doctor indicating he could return to work. According to it, upon receipt of the notification, the Carrier requested, received and reviewed his medical history and returned Claimant to service on July 8, 2008, but Claimant voluntarily chose to wait until July 16th to actually return to an assignment and perform compensated service.

Countless Boards have ruled that Carriers have the managerial right to withhold employees from employment until the question of their physical fitness has been clarified and each case must be measured upon its own merits. As a general "rule of thumb" a reasonable period of time has been determined to be five days to one calendar week. The Carrier argued that its Medical Department released the Claimant for service within seven days after receipt of the Claimant's release from his personal physician which was a reasonable period for the processing of the paperwork. The Board does not disagree with that assessment as it is consistent with Award No. 67 of this tribunal. However, the question at issue in this case is not whether a reasonable period was taken, but instead is a much simpler question of **"When was the Claimant advised by the Carrier that he could return to work?"**

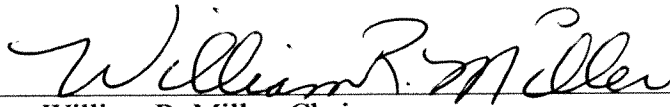
The Carrier argued Claimant was notified on July 8th to return to work, but the record does not support that statement. The e-mail release from the Medical Department is dated July 8, 2008, and it is addressed to three Carrier Supervisors who offered no evidence that they advised the Claimant that he was released on that date. In the Organization's letter of April 13, 2009, it stated the following:

"...However the claimant was not informed until July 14, 2008, by letter. As per conference with Mr. McNulty, it was established that the Carrier officers at San Antonio, Texas, where the Claimant had tried to displace at knew that he was released on July 08, 2008. The Claimant could have been notified at that time that he was released to return to work by the Carrier officers but was not. Therefore, the Claimant was not afforded the opportunity to work until July 16, 2008, after he received the letter from Medical services...."

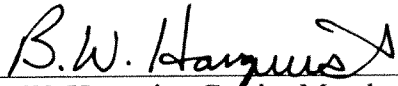
The Organization's final statement was not rebutted and in accordance with long standing arbitral precedent must be accepted as fact. Therefore, the Board finds and holds that because the Claimant was not advised that he could return to work on July 8, 2008, he is to be compensated at the straight time rate for all days lost after July 8th until his return to service on July 16, 2008.

AWARD

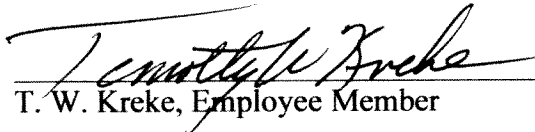
Claim partially sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed by the parties.



William R. Miller, Chairman



B. W. Hanquist, Carrier Member



T. W. Kreke, Employee Member

Award Date: October 4, 2010