

PUBLIC LAW BOARD NO. 2960

AWARD NO. 134-  
CASE NO. 249

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 improperly withheld Machine Operator T. W. Jacobsen from service from April 7, 1987 until April 27, 1987. [Organization File 8KB-4209; Carrier File 81-87-109]

(2) Claimant T. W. Jacobsen shall now be allowed compensation at the applicable rate of pay for all lost time from April 7, 1987 to April 27, 1987."

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.

The basic facts are not disputed. Prior to April 7, 1987, the Claimant was in a furloughed status and on that date was assigned a Junior Tamper Operator's position by Bulletin No. 8031. The Claimant reported for duty, worked one (1), day but was then withheld from service pending the

results of a physical examination and urinalysis. He was also required to attend a one (1) day training session. The Claimant was allowed to resume his position on April 27, 1987. The reason for the delay related to the fact the Carrier's medical director experienced a problem in getting the complete results of the Claimant's physical examination from the clinic in Janesville.

It is well established that the Carrier has the right to withhold employees from service for physical examination when legitimate reasons present themselves. One legitimate reason is -- as in this case -- a long absence from duty.

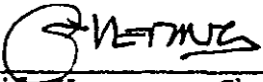
While this right clearly exists, the process cannot be unduly delayed. When it is, the Carrier is liable for the wage loss such delay causes an employee. The question is whether the delay involved in this case was excessive.

What constitutes an excessive delay depends on the facts and circumstances of each case. In this instance, a routine return to work physical was involved. For instance, it didn't involve any unusual illness or referral to a specialist which might reasonably be expected to prolong the process. Thus, it is the judgement of the Board that the process should have been completed no later than April 17.

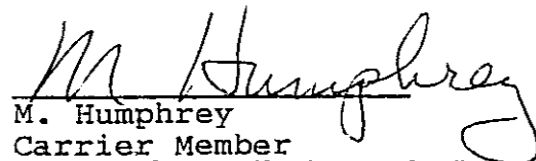
Accordingly, the Claimant is entitled to lost wages after this date up to the time of reinstatement.

AWARD:

The claim is sustained to the extent indicated in the opinion.

  
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Gil Vernon, Chairman

  
D. D. Bartholomay  
Employee Member

  
M. Humphrey  
Carrier Member

Dated: 5/9/89