

PUBLIC LAW BOARD NO. 2960

AWARD NO. ~~100~~ 165  
CASE NO. 266

**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 Trackman Mervin Ellis from service following his assignment by bulletin to a trackman position (Organization File 4PG-3228T; Carrier File 81-88-149).
- (2) Trackman Mervin Ellis shall now be compensated for all wage loss suffered from May 13 through June 15, 1988, at the applicable trackman's rate of pay."

**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 facts are not disputed. On April 20, 1988, the Carrier posted Bulletin 88-072 advertising Trackman positions on a tie gang headquartered at Roseport, Minnesota. On May 5, 1988, the Claimant was assigned to a Trackman position on this tie gang by

Assignment Notice No. 011. On May 10, 1988, he made arrangements to take a physical examination, and the results were received by Dr. Cook, the C&NW Medical Director, on May 17, 1988. On May 18, 1988, the Central Division and the Claimant were notified by Dr. Cook that certain medical problems needed to be resolved before the Claimant could be returned to service. The Claimant was reexamined on May 27, 1988, by his personal physician who forwarded the results in a letter dated June 2, 1988. This information was received by Dr. Cook on June 10, 1988.

The Carrier, if legitimate medical questions are raised by a routine return-to-work physical, is privileged to require a follow-up exam. They are not liable for the delay caused by the reexamination if there was good cause for same.

The time that it took for the reexamination is the only questionable portion of the delay in this case. The initial exam and evaluation was reasonably expeditious and the evaluation of the reexamination which was received June 10 was prompt.

In evaluating whether the reexamination was directed for good cause, we note that there is no information in the record as to precisely why it was requested. The other reference in the record as to the basis of the request for a reexamination was that it was for a "personal" medical reason. Without more detail we are without a basis to determine if it was necessary. We also believe that the Claimant must bear the responsibility for this since those medical records could only be released with his consent.

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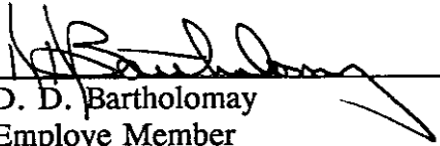
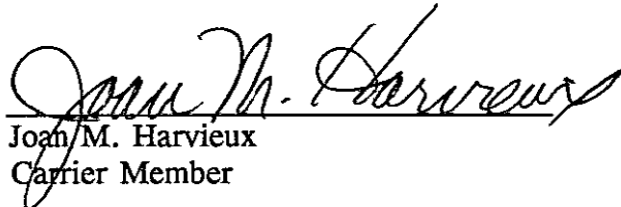
AWARD NO. <sup>165</sup>~~III~~

AWARD:

The claim is denied.



Gil Vernon, Chairman

  
D. D. Bartholomay  
Employee Member  
Joan M. Harvieux  
Carrier Member

Dated: 7-25-91