

PUBLIC LAW BOARD NO. 2960

PARTIES Brotherhood of Maintenance of Way Employees

TO and

DISPUTE Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim filed in behalf of Mr. J. P. Schumann, Employee No. 139721, as a result of the Company denying Claimant of his contractual right to timely assume his Bulletined position."

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

OPINION OF THE BOARD: On August 22, 1988, the Carrier issued an assignment notice indicating that the Claimant was assigned to Bulletin No. 88263. This assignment was to be effective August 22, 1988. Claimant was notified and took a physical on August 22. The results of this physical exam were not received by the Carrier's Medical Director until Friday, September 9, 1988. These records were reviewed and claimant was qualified to return to service on Monday, September 12, 1988. The Claimant was returned to the Carrier's service on that date. The claim seeks compensation for all time lost from August 22 until September 12.

In response to the Organization's argument that the delay in this case was excessive, the Carrier points out that the Claimant could have requested a physical in advance of the bulletin. However, this doesn't explain why it took 21 days to fully process his return-to-work physical.

Certainly the appointment was made expeditiously, as was the medical director's review of the examination results. The real problem is the excessive time in between. The question is why did it take so long to get the results to the Medical Director. The Carrier has not satisfactorily answered this question. Moreover, there is no causal relationship between the Claimant delaying his scheduling of the physical and the fact it took 18 days for the results of the examination to reach the medical director. This delay is unreasonable, and there is no evidence to suggest that it was due to anything but Carrier negligence.

It is the conclusion of the Board that the entire process of approving the Claimant should have been completed by September 1. Therefore, he is entitled to all time lost between and including September 2 and September 12.

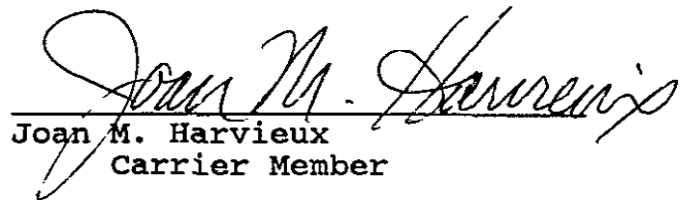
AWARD

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



Gil Vernon, Chairman


D. D. Bartholomay
Employee Member


Joan M. Harvieux
Carrier Member

Dated: April 5, 1993