

PUBLIC LAW BOARD NO. 2960

AWARD NO. 178
CASE NO. 436

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and 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 D. L. DeSalvo from service from April 1 through April 23, 1991 (Organization File 8LF-2427T; Carrier File 81-91-100).
- (2) Claimant D. L. DeSalvo shall now be allowed one hundred twenty eight (28 [sic]) hours' straight time pay and twenty-five and one-half hours' (25½) overtime pay at the 903 Class B Machine Operators rate of pay."

OPINION OF THE BOARD:

In 1991, the Carrier changed its policy of requiring employees furloughed for less than nine months to take physical examinations as was required in the past. Pursuant to the Carrier's policy, the Claimant submitted a "Employee Health Certification Form" (Form 2488). On March 5, 1991, Bulletin No. I-8075 was released advertising positions on the Interdivisional Rail Gang. The bulletin indicated that applications for the positions would be accepted until 8 a.m. on Friday, March 15, 1991, that assignments would be made on March 22, 1991, and that the gang would commence working on April 1, 1991.

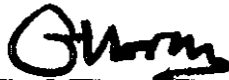
In this case the Claimant submitted his Form 2488 with his bids. Assignments were actually made on March 25, 1991. On March 30 the Claimant was advised he would need a urine screen before he could be approved for service. On April 2 the Claimant called a

Carrier physician for the purpose of getting the urine screen and was given an appointment on April 18. the results were received by the Medical Department on April 22. The Claimant was then cleared on April 23.

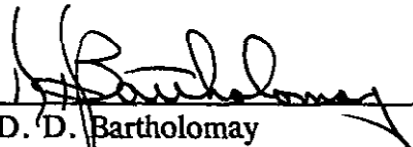
The Board has no quibble with the Carrier's changed policy concerning the physicals, the Form 2488, or waiting until the assignments are made to medically process employees. However, that processing must occur within a reasonable period of time which, generally speaking, is ten calendar days. In this case, the bids were awarded March 25 and the Carrier should have completed the medical approval process within ten days of that point or no later than April 4. The Claimant should have been able to start work on April 5. Thus, there was a total delay of 19 days. However, it took four days for the Claimant to call for an appointment. Accordingly, the Carrier is responsible for 15 days delay.

AWARD:

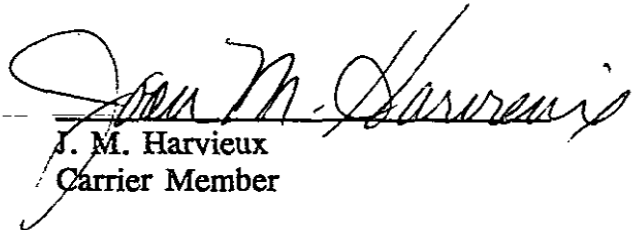
The claims is sustained to the extent indicated above. The Carrier is directed to pay the Claimant time lost between April 4 and April 19, 1991.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member



J. M. Harvieux
Carrier Member

Dated: 11/9/93