

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Case No.201

*AWARD 190*

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Agreement was violated when the Carrier refused to allow Trackman R. A. Scheeper to return to service on April 1, 1991 and instead withheld him without justification until September 9, 1991 (Organization File 4LF-2440T; Carrier File 81-91-116).
2. Trackman R. A. Scheeper shall now be compensated for all wage loss suffered at the trackman's straight time rate of pay from April 1, 1991 to September 9, 1991.

FINDINGS:

Claimant, R. A. Scheeper, was on furlough due to a force reduction when on March 5, 1991, the Carrier posted a bulletin advertising a trackman position on a welding gang in Boone, Iowa. Claimant was assigned the position effective April 1, 1991.

As part of Carrier's return-to-service procedure, the Claimant submitted Form 2488 which was part of a procedure which had been established to reduce the number of physical examinations. From the information contained in Claimant's Form 2488, it was determined that his condition was "not stable". Claimant has been suffering from a seizure condition and according to Form 2488 and Claimant's personal physician,

Claimant had suffered a seizure on April 3, 1991. Subsequently, the Carrier's Medical Director notified the Claimant that he could return to work but with several restrictions. He was not allowed to work around moving equipment or dangerous machinery; he could not work alone or at heights; he would not be able to drive Carrier vehicles; and he could not work on rotating shifts. Because of these restrictions, the Carrier did not allow the Claimant to work as a trackman until his condition was corrected.

On August 13, 1991, the Claimant's personal physician notified the Carrier by letter that the Claimant was now taking new medication that seemed to have stopped the Claimant's seizures, adding that he had not suffered a seizure in the past six months. Therefore, it was the doctor's opinion that the Claimant could return to work without medical restrictions on August 19, 1991. As a result of some delays on the part of the Carrier, the Claimant was not returned to service until September 9, 1991.

The Organization filed a claim on behalf of the Claimant seeking compensation for all wage loss during the period from April 1, 1991, through September 9, 1991. The Organization contends that the Carrier had known of the Claimant's condition and furthermore, the Claimant's personal physician stated that the seizures "should not interfere with [the Claimant's] job as trackman".

*The parties being unable to resolve the issue, this matter now comes before this Board.*

This Board has reviewed the record in this case and we find that the Carrier was justified in holding the Claimant out of service during the period April 1, 1991 until

August 17, 1991. On August 17, 1991, the Carrier received a letter dated August 13, 1991, from the Claimant's neurologist which stated that the Claimant had not had a seizure since February 18, 1991, which had been nearly six months and which would allow him to legally start driving again. Doctor Risk stated that the Claimant "may return to work on August 19, 1991, without medical restrictions".

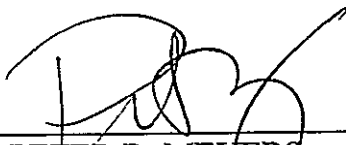
The Carrier did not return the Claimant to work until September 9, 1991. The Carrier is correct that it has a right to determine on its own an employee's ability to work. However, once a Carrier receives a return-to-duty slip from a doctor, it must act expeditiously and make a deliberate effort to examine the employee and get him back to work promptly. In this case, the Carrier simply took too much time in having the Claimant examined and actually getting him back on the job.

Therefore, this Board finds that it would have been reasonable for the Claimant to have been returned to work within two weeks of the Carrier's receipt of the doctor's letter. It was the Carrier's fault that he was not returned to work promptly. This Board orders that the Claimant be awarded backpay for the period September 1, 1991, through September 9, 1991.

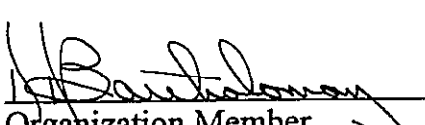
#### AWARD

Claim sustained in part. Claimant's request for backpay from April 1, 1991 until

August 31, 1991 is denied. Claimant is awarded backpay for the period September 1, 1991 through September 9, 1991.

  
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PETER R. MEYERS  
Neutral Member  
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Joan M. Lawrence  
Carrier Member

DATED: June 3, 1994

  
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H. Bantolomay  
Organization Member

DATED: June 3, 1994