

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 106

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of P. C. Robertson, requesting that he be paid for all time lost from November 30 through December 17, 1999, during which time he was held out of service for medical reasons.

(Carrier File YN-TRM-001; Org. File MW-ROAN-99-76-LM-526)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

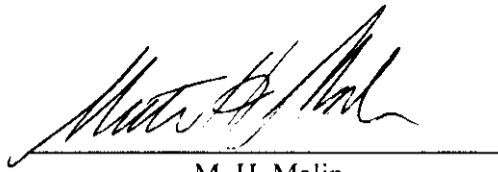
AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

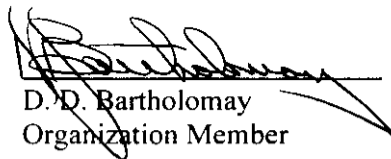
Carrier withheld Claimant from service for medical reasons from November 30 to December 17, 1999. During handling on the property, Carrier maintained that it did so because on November 29, 1999, Claimant told the Gang Foreman that he was having difficulty while operating pneumatic tools and experienced dizziness while bending over. Carrier maintained that Claimant attributed the dizziness to his medical condition which includes reliance on a pacemaker.

The Organization relies on a written statement from Claimant submitted during the on property conference. The statement provide, in relevant part, "At no time did I make any statements to the foreman, assistant division engineer or anyone else concerning my inability to perform my job." Significantly, the statement does not deny that Claimant advised the Foreman that he experienced dizziness when bending over and operating pneumatic tools.

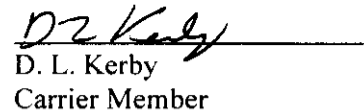
On this record, we find that the Organization has failed to prove that Carrier acted arbitrarily, or without reasonable concern for Claimant's medical qualifications, when it withheld him from service. Accordingly, the claim is denied.



M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on February 13, 2002