

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 161 **Award 145**

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. The Carrier violated the Agreement when it did not timely notify the General Chairman of its decision following the hearing held for Claimant D. R. Menter on May 25, 1988 (Organization File 4SW-1303 T; Carrier File 81-88-156).

2. Therefore, Claimant D. R. Menter shall now be assigned to the Class A Foreman's position Tie Gang T-4, compensated the differential in wages received and those wages of the Tie Gang Foreman's position and reimbursed camp car expenses.

FINDINGS:

This claim involves the a dispute between the Organization and the Carrier as to the assignment of the position of Class A Foreman on the T-4 Tie Gang. On May 1, 1988, the Carrier assigned the position to a Mr. R. W. Straiton, but the Organization contends that the position should have been assigned to Claimant D. R. Menter because the Claimant had more seniority than Mr. Straiton and was more qualified to perform in that position than Mr. Straiton. The Carrier contends that the position was assigned to Mr. Straiton because the Claimant was in a furloughed status as of May 1, 1988, when the position was assigned, due to the Claimant's failure to complete his return-to-work physical before that date. The Carrier also contends that Mr. Straiton was well qualified for the position.

The hearing took place on May 25, 1988. On June 3, 1988, the Carrier denied the Organization's claim and grievance on behalf of the Claimant. The Organization thereafter appealed on behalf of the Claimant, challenging the Carrier's decision and claiming that the Carrier committed a procedural default because its decision was not rendered in a timely fashion. The parties being unable to resolve the issues, this matter then came before this Board.

This Board has reviewed the procedural arguments raised by both parties, and we find them to be without merit.

With respect to the substantive issue, this Board has reviewed the record and testimony in this case and we find that the Union has not presented sufficient evidence to support its claim that the Claimant was qualified to assume the Class A foreman's position on May 1, 1988. The Carrier had a right to require a return-to-work medical examination in order to determine whether the Claimant was medically fit to return to work. The Claimant failed to complete his return to work physical before May 1, 1988. Therefore, since his physical examination was a requirement to return to work, Claimant was still officially on furlough.

There is no question that a Carrier has a right to require that the Claimant be examined by a physician of its choice before placing the employee on assignment. In this case, the Claimant failed to make himself available for the physical examination which was required prior to beginning the new position. Claimant

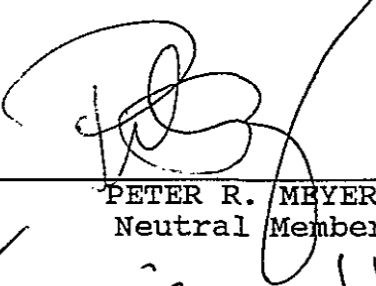
924.

Awd 145

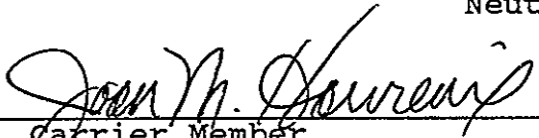
was still on furlough status when Mr. Straiton was awarded the position in question. Consequently, even if the Claimant had more seniority than Mr. Straiton, he was not eligible for the position. Therefore, the claim must be denied.

AWARD:

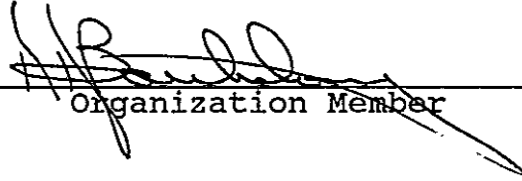
Claim denied.



PETER R. MEYERS
Neutral Member



Joan M. Lawrence
Carrier Member



H. B. Bauld
Organization Member

Date: 7/25/91