

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 185

Award No. 173

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

1. The Agreement was violated when the Carrier withheld Common Machine Operator D. W. Tuttle from service from March 29 through May 22, 1990 (Organization File 2PG-3344T; Carrier File 81-90-81).
2. Claimant D. W. Tuttle '...must be compensated for all hours of operation that his Jimbo machine was operated at the applicable 903 rate of pay for machine operators from March 29, 1990 through May 22, 1990'.

FINDINGS:

On March 6, 1990, the Carrier released a bulletin advertising the availability of two positions for jimbo machine operators with work starting approximately March 26, 1990.

The Claimant, a machine operator who was on furlough status, applied and was awarded one of the aforementioned positions. As required by the Carrier's standard procedures, the Claimant underwent a physical examination on March 28, 1990. Based on the results from the exam and on Claimant's previous dependency problem, additional information was needed before Claimant could be medically qualified to return to work. On April 17, 1990, the Carrier notified the Claimant that based on the results from his medical examinations, he would be temporarily medically disqualified and would be returned to active service when he met

certain requirements. On May 17, 1990, the Medical Department notified the Engineering Department that the Claimant had met all requirements to be medically qualified to return to work. The Engineering Department notified the Claimant on May 22, 1990, that he was released to active service.

The Organization filed the instant claim on behalf of the Claimant seeking compensation for all lost time from March 29, 1990 through May 22, 1990.

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the record in this case and we find that there is sufficient evidence to support the finding that the Carrier properly withheld the Claimant from service for the period March 29 through May 22, 1990. Therefore, the Board must deny the claim.

The record reveals that the Claimant in this case was returning from a furlough. The Carrier requires that all employees returning from furlough submit themselves for a physical examination. This Claimant had a history of alcohol dependency problems and indicated that he was still drinking alcohol. Consequently, the Carrier requested an additional evaluation by its Medical Department in April of 1990. The Medical Department was notified on May 16, 1990, that the Claimant had met the requirements to return to work. The Claimant was allowed to return to work on May 23, 1990, after the Engineering Department was able to contact him.

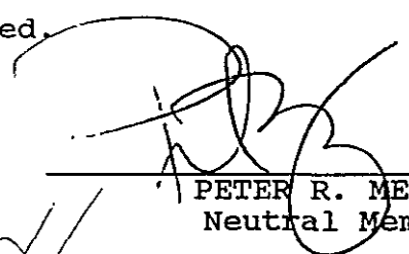
It is fundamental that the Carrier has a right to determine

an employee's physical and mental competency to return to service after a furlough. The Carrier also has a right to obtain additional information if there is something in the file or in the statements of the employee that indicates that he may be suffering from a condition which may have an impact on his work. In this case, the Carrier properly required additional medical information from the Claimant given his history and his statements regarding continued alcohol use.

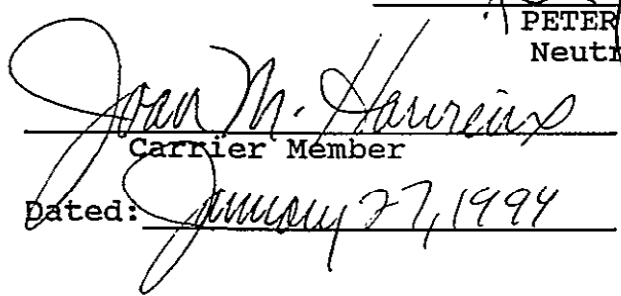
With respect to the issue of whether or not there was an excessive delay, it is evident from this file that the Carrier moved with all deliberate speed to return the Claimant to service. We do not find that the Carrier acted unreasonably in its handling of this matter. These medical reviews take some time. Therefore, the claim will be denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: January 27, 1994