

NATIONAL MEDIATION BOARD, ADMINISTRATOR
SPECIAL BOARD OF ADJUSTMENT NO. 957

In the Matter of the Arbitration

-between-

Brotherhood of Maintenance of
Way Employees

OPINION AND AWARD
Award No. 279

-and-

Southeastern Pennsylvania
Transportation Authority

In accordance with the agreement in effect between the above-named parties, the Undersigned was designated as the Chairman and Neutral Member of the SEPTA-BMWE Special Board of Adjustment (the Board) to hear and decide the following Claim:

1. The undue delay in returning Claimant E. Wiza to duty following his medical release to return to duty without restrictions on June 12, 2008 is unjust, unwarranted and in violation of the Agreement (Carrier's File 08-050-F11).
2. As a consequence of the violation in Part (1) above, the BMWE is requesting an immediate return to duty examination for Mr. Wiza, restoration of all benefits and all back pay from June 12, 2008, the date Mr. Wiza was cleared to return to full duty from his personal physician.

A hearing was held in Philadelphia, Pennsylvania on February 12, 2009 at which time the representatives of the parties appeared. All concerned were afforded a full opportunity to offer evidence and argument and to examine and cross-examine witnesses consistent with the relevant procedures that exist between the parties. The Claimant attended and participated in the hearing. The Board met in Executive Session after the hearing.

FINDINGS OF FACT AND OPINION OF THE BOARD

The record indicates that the present dispute arose due to the decision of the Carrier to delay the return to work of the Claimant, who had incurred an injury to his knee. The record reflects that the Carrier reinstated the Claimant to his position on or about January 1, 2009. The Carrier denied that any violation of the Agreement had occurred because the Claimant provided conflicting medical documentation concerning his physical condition and his ability to return to work. The Organization alleges that the Carrier improperly disregarded certain medical documentation that the Claimant provided and that supported the Claimant's return to work at an earlier date. The Organization therefore initiated a grievance to challenge the delay by the Carrier. The Carrier denied that any violation had occurred.

The parties failed to resolve the matter during the preliminary steps of the grievance procedure. The dispute proceeded to arbitration for a final and binding determination.

During the hearing the parties indicated that they had agreed to settle the instant dispute. As a result, the Award shall indicate that the Claim is dismissed.

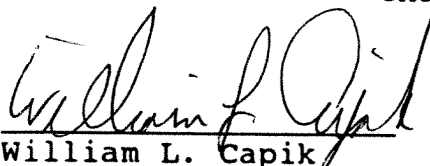
Accordingly, the Undersigned, duly designated as the Chairman and Neutral Member of the SEPTA-BMWE Special Board of Adjustment and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

The Claim is dismissed in accordance with the

Opinion of the Board.

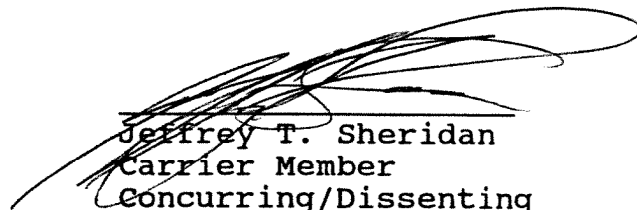


Robert L. Douglas
Chairman and Neutral Member



William L. Capik
Employee Member
Concurring/Dissenting

DATED: 2/27/09



Jeffrey T. Sheridan
Carrier Member
Concurring/Dissenting