

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 32616
Docket No. MW-32067
98-3-94-3-454

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. R. Lucero from service beginning April 1, 1993 and continuing without just and sufficient cause (System File D-93-14/MW M93-4).
- (2) The claim * as appealed by General Chairman W. F. Gulliford on July 23, 1993 to Labor Relations P. L. Joyner shall be allowed as presented because said claim was not disallowed by Labor Relations P. L. Joyner in accordance with Rule 30 (a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the claim shall be allowed as presented in accordance with the provisions of Rule 30 (a).

*The letter of appeal will be reproduced within our initial submission."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was recalled from furlough on March 22, 1993 to fill a position on the section force at Grand Junction, Colorado. After requesting and receiving a one week delay to accommodate child care issues, he reported on March 29. A specimen produced in the course of his return-to-work physical revealed possible dilution, and as a result, Claimant was withheld from service and tested again for prohibited substances on April 2. The testing lab again reported evidence of dilution. Claimant remained out of service until April 15, when he was examined by a urologist and tested a third time. No prohibited substance and no evidence of dilution were detected, and Claimant was cleared to and did return to service on April 26.

By claim dated May 17, Claimant asserted that Carrier violated Rules 1, 2, 3, 13 (a) and 25 of the Agreement by refusing to permit him to return to work on April 1. The claim asserted that the sole purpose of the required urinalysis was to determine use of illegal substances. Since no such evidence was detected in Claimant's case, he was wrongfully withheld from service. By letter of June 4, Carrier's District Engineer's Office denied the claim in reliance on company policy in withholding recalled employees pending successful completion of a return-to-work physical.

On July 23, the Organization's General Chairman appealed the claim. Although received by Carrier that day, the appeal was never disallowed as required by Rule 30. That Rule provides in pertinent part:

"RULE 30
CLAIMS AND GRIEVANCES

Presented

- (a) All claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the Company

authorized to receive same within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Company shall within sixty (60) calendar days from the date same is filed notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified the claim or grievance shall be allowed as presented but this shall not be construed as a precedent or waiver of the contentions of the Company as to other similar claims or grievances." (Emphasis supplied.)

Based upon a careful review of this record, we conclude that we are precluded from reaching the merits of this dispute. The undisputed absence of a response by Carrier to the Organization's July 23 appeal within the 60 day time limits established by Rule 30 compels this Board to sustain the claim as presented.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of June 1998.