

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12937  
Docket No. 12611  
95-2-92-2-148

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Transportation • Communications International  
( Union (Carmen Division)  
(  
(Chicago and North Western Transportation  
( Company

STATEMENT OF CLAIM:

"1. Carman Marvin Mishich, Butler, Wisconsin was unjustly and unfairly withheld from service and not returned to work in a timely manner from a work-related injury; account the Chicago and North Western Transportation Company violated Rules 25, 26 and 32 of the controlling Agreement.

2. Accordingly, Carman Marvin Mishich be compensated for eight (8) hours pay per day from November 26, 1990 up to and including February 20, 1991 plus all overtime he was entitled; plus all long-distance phone calls pertinent to this case."

FINDINGS:

The Second 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 waived right of appearance at hearing thereon.

The Claimant suffered an on-duty injury on October 10, 1990, causing him to remain out of service. On November 20, 1990, he advised the Carrier that he was prepared to resume service, and a return-to-work physical examination was scheduled for November 26.

As part of the physical examination, the Claimant was required to undergo a urine test. As information in reference to this test, he advised the examiner of having recently consumed alcohol ("24 hours 10 beer (tap)"). The Claimant had been treated for substance abuse (alcoholism) only three years earlier. The Carrier notes this is undisputed by the Organization.

As a result, the Carrier required the Claimant to undergo further analysis to assure that his former problem was not continuing and thus making him physically unfit to return to work. After a series of examinations, the Carrier received assurance of the Claimant's current stable condition. Following receipt of such information on February 15, 1991, the Claimant was permitted to return to service on February 20, 1991.

Contrary to the Organization's argument, the Board does not find that the Carrier abused its authority in following up on the Claimant's own statement that he had consumed alcohol immediately prior to reporting for his return-to-work physical examination -- particularly in view of the Claimant's past history known to the Carrier. The time involved (just under two months) was extensive. However, a number of interviews were involved, and there is some indication that the Claimant was not promptly cooperative at each step. Given these circumstances, the Board does not find any unwarranted delay. The Claim for time lost by the Claimant during this process is without merit.

It should be stated, as well, that the procedure was related solely to medical qualification and was in no manner a disciplinary suspension.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of August 1995.