

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12940
Docket No. 12680
95-2-93-2-78

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 & Northwestern Transportation
(Company

STATEMENT OF CLAIM:

"1. Carrier violated Rule 14, 16 and 25 by unjustly withholding Carman Adam Branagh from returning to active duty within a reasonable period of time on February 1, 1991.

2. that accordingly Carrier shall be ordered to compensate Adam Branagh eight (8) hours pay per day at the straight time rate from February 1, 1991 to February 21, 1991 inclusive, plus all benefits he was entitled to during this period of time."

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 a broken arm as a result of an on-duty injury on October 15, 1990. While recuperating, he suffered fractured ribs on December 7, 1990. The Claimant was examined by the Carrier's Medical Department on December 14, 1990. On January 11, 1991, the Carrier's Medical Consultant wrote to the Claimant, stating the Claimant was found to have "high blood pressure" during the December 14, 1990 examination and that "I cannot qualify you for work at this time". In the same letter, the Carrier requested that the Claimant have his "treating physician forward an updated complete medical report on your left forearm, rib fracture and blood pressure". Responses on six specific aspects of the Claimant's condition were also requested.

Up to this point, the Claimant took no exception to the Carrier's handling of his return to work. Here, however, is where the conflict commences. According to the Organization, the Claimant's physician provided on January 14, 1991 brief answers on a prescription note sheet. It included no reference to the high blood pressure condition. More significantly, however, the Carrier's Medical Department contends that it never received this brief note from the Claimant's doctor. An Organization exhibit in the claim file indicates that on February 10, the Carrier advised that it had not received the requested information.

As a result of this, the Claimant provided a copy of the original note dated January 14, 1991 as well as other requested information, including blood pressure on February 14, 1991. Within a week thereafter, the Claimant was approved for return to duty commencing February 21, 1991.

The Carrier clearly has the right and obligation to obtain full medical information concerning employees returning to duty from extended illness or injury. On the other hand, unnecessary or unexplained delay in processing employees' medical records is not acceptable, and the Organization properly cites numerous Awards in which pay is granted to employees unreasonably delayed in return to work. In this instance, such delay might well have been found if, in fact, there was some showing that the physician's note of January 14 had been conveyed to the Medical Department. (It also must be noted that the brief answers hardly qualified as a full "medical report"). The Board, however, has no way to determine that such information was provided. When the Carrier stated it had not received the information, and the information was thereafter provided, the Claimant was returned to work in reasonably prompt fashion on February 21. Under these circumstances, the Carrier cannot be charged with the sole responsibility for the delay in receipt of the properly requested information.

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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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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