

Award No. 6048
Docket No. 5880
2-SCL-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Don J. Harr when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current applicable agreement Carman W. B. Pittman employed at Wildwood, Florida is entitled to thirty-two (32) hours at straight time pro rata rate of pay beginning May 5, 1968 through May 8, 1968 for services he would have performed had he been properly returned to his position after being released by Doctors D. C. Albritton, H. L. Harold and a bone specialist, S. H. Gilman.

2. That accordingly the Carrier be ordered to compensate Carman W. B. Pittman for thirty-two (32) hours at straight time pro rata rate of pay for said violation.

EMPLOYEES' STATEMENT OF FACTS: Carman W. B. Pittman, hereinafter referred to as the claimant is regularly assigned at Wildwood, Florida in the car department. Carman Pittman sustained an injury which required him to be off the job in excess of thirty (30) days. Mr. Pittman's doctors released him to return to work and on May 2, 1968 he notified the general foreman, Mr. L. B. Foster, of his intention to return to work on May 5, 1968. The general foreman told Carman Pittman that he needed the Okay from the company surgeon before he could place him back on his position. At this time the claimant went to Dr. H. L. Howard who also immediately released him to return to work. The claimant was held off his position May 5, 6, 7 and 8, 1968. The claimant was released as sound and able to return to his bid-in assignment prior to May 2, 1968 by two doctors, one a specialist in the treatment involved in this case. When the claimant presented his release to the carrier from the doctors and was not allowed to return to work, he went to a third doctor, Dr. H. L. Harold, who after examination, also gave him a release to return to work.

The agreement was violated by this arbitrary and unjust suspension of this claimant from service for the four (4) days' work he was forced to lose. Compensation was requested and the carrier refused to allow same.

DENIAL AWARD 17292

"It is too well settled to need elaboration that when the parties are in disagreement concerning a set of facts on which a claim is based, the burden is on the party making the claim to support the existence of the facts its alleges, Awards 13330, 16288 and others."

The respondent carrier reserves the right, if and when it is furnished ex parte petition filed by the petitioner in this case, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered herein.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Claimant suffered an off-duty accident which resulted in his being off work beginning February 26, 1968. Claimant's personal doctors released him and on May 2, 1968, he notified the General Foreman of his intention to return to work on May 5, 1968. Claimant was advised that he would have to submit to an examination by a company doctor and that final approval for his return to work would have to come from the Chief Medical Director. Claimant was examined and the Chief Medical Director authorized his return to work on May 8, 1968.

The claim before the Board is for thirty-two hours at the straight time rate of pay, May 5, 6, 7, and 8, 1968, based upon the effective agreements between the parties.

Carrier raises two jurisdictional issues:

1. The time limit issue.
2. Amendment of the claim upon appeal to the Board.

Carrier contends that it did not receive the employe representative's letter dated August 9, 1968, which rejected the Master Mechanic's decision, until December 2, 1968. This letter is reproduced in both parties' submissions. We will not at this point dispute the employes' veracity and will deny Carrier's Motion to dismiss the claim for violation of the time-limit rule.

We will also deny the Carrier's Motion to dismiss because of the alleged amendment upon appeal. The employes do cite different rules during the handling upon the property and in their submissions. We do not find this to be fatal since the claim remains the same.

We cannot find that the Carrier violated the agreement in its handling of this matter. We are faced with a line of precedent from this Division and other Divisions of the National Railroad Adjustment Board.

Third Division Award 14761 (Ritter) states:

"In view of prior awards concerning this same issue, we are unable to find that the time consumed in allowing this Claimant to return to work was arbitrary or unreasonable. Award 8535 - Bailer, involved a delay of 14 days; Award 13523 - O'Gallagher, involved a delay of 29 days; and Award 10907 - Moore, involved a delay of 6 days."

We cannot find that the Carrier's handling of this matter was arbitrary or capricious.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1970.