



Award No. 6278

Docket No. 6120

2-SCL-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

SEABOARD COAST LINE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under terms of the agreement Carman B. C. Quarterman was unjustly held out of service the period December 13, 1969 through January 2, 1970 and being placed to expense of furnishing personal transportation for 604 miles, hotel room rent of \$4.00 and four meals.

2. That accordingly the Seaboard Coast Line Railroad Company be ordered to compensate Carman B. C. Quarterman eight (8) hours pro rata rate of his assigned position each day December 13, 14, 15, 23, 24, 27, 28, 29, 30, and 31, 1969 and time and one half rate for January 1, 1970, and 604 miles at ten (10) cents per mile and reimbursement of \$4.00 for hotel room rent and four (4) meals at \$1.50 each.

EMPLOYEES' STATEMENT OF FACTS: Mr. B. C. Quarterman, Carman (hereinafter referred to as Claimant), is employed by the Seaboard Coast Line Railroad Company (hereinafter referred to as Carrier) at Columbus, Georgia as a car inspector and repairman, with rest days Thursday and Friday. He holds seniority rights under provisions of Rule No. 15 of the agreement with seniority date of 12-24-1963, however, he has been continuously employed by the Carrier since 3-27-1951.

The Claimant injured his leg on September 27, 1969 while trying to start a motorcycle. He visited his personal physician, Mr. George S. Whatley, M.D., on the above date. It was discovered the Claimant had fracture lateral tibia plateau and was hospitalized. A plaster cast was placed on his leg and on October 3, 1969, he had recovered sufficiently to be released from the hospital. The Claimant's recovery was excellent and on December 12, 1969, Dr. Whatley released him with a statement addressed to the Carrier's Medical Department that in his opinion the Claimant is sufficiently recovered to safely resume his usual duties.

The Claimant reported for duty on December 13, 1969 and presented the Carrier with a statement from Dr. Whatley which gave diagnosis, brief his-

is cited by the Claimant's representatives which would preclude the Carrier's right to have this Claimant examined by its company doctor.

The Organization has alleged that rules were violated and that the handling given in this matter was unreasonable. However, they have presented no evidence to substantiate their allegations. Carrier has clearly shown that rules cited by the Organization are not applicable, therefore, no violation existed. It certainly is not unreasonable for Carrier to be certain that the employe is physically able to return to duty, particularly since it is as much for the employe's benefit as it is his fellow employes' and the Carrier's.

The Organization has not sustained its burden of proof. Numerous awards of all Divisions of the NRAB have upheld that the party making the allegations have the burden of proving them. Cited, among them, are Third Division Awards 17833 (SCL vs BRAC) and 16450.

Denial Award 17833 (SCL vs BRAC): "It is a well established principle of the Board that the burden is upon claimants to prove all essential elements of their claim, and that mere assertions are not proof. (Awards 16881, 16813, 16780, 16499, 16258, among others)"

Denial Award 16450: "This Board has repeatedly held that Claimants having presented the claim have the burden of proving it * * * mere allegations, without probative evidence in support thereof does not constitute proof."

It is pointed out, however, that it is impossible for the Organization to sustain its burden of proof in this claim, since there are no agreement violations.

Carrier reaffirms its position that there has been no violation of the Agreement in this instance, and respectfully requests that your Board deny this claim in its entirety.

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.

The facts in this case are that Claimant sustained an off-duty injury to his leg on September 27, 1969, while trying to start a motorcycle. He visited his personal Physician on that date and was hospitalized with a fracture. A plaster cast was placed on his leg and on October 3, 1969, he was released from the hospital. On December 12, 1969, his personal Physician released him with a statement addressed to Carrier's medical department that in his opinion Claimant was sufficiently recovered to safely resume his normal duties.

Claimant reported for duty on December 13, 1969 and presented Carrier with a statement from his personal Physician which gave diagnosis, brief history, duration of care, treatment, prognosis and the above referred to state-

ment. Carrier would not permit claimant to resume his duties. On December 17, 1969, his Supervisor ordered Claimant to report to the Carrier's local Doctor for an examination. It was December 22, 1969 before Carrier's local Doctor examined claimant, the results of which were approval for normal resumption of duties.

Claimant was still not allowed to return to duty and on December 26, 1969, Carrier's Chief Medical Officer wrote to Claimant advising him that he had received form Med-2 report of physical examination performed by the Company Physician and on the basis of the report felt it necessary that Claimant report to his office located in Jacksonville, Florida on January 2, 1970 at 8:30 A. M. Claimant complied with this request and after being examined, was returned to duty on January 3, 1970.

Claimant alleges a violation of Rules 15 and 32 and contends that Carrier's actions were arbitrary and that he received unjust treatment. He holds seniority rights to service under Rule 15 and because of his seniority standing, he held rights to work his regular assignment unless disqualified for service by discipline administered under Rule 32 or was disqualified for service because of physical reasons.

The claim itself as submitted is for eight (8) hours pro rata rate of his assigned position each day, December 13, 14, 15, 23, 24, 27, 28, 29, 30 and 31, 1969 and time and one half rate for January 1, 1970, and 604 miles at ten (10) cents per mile and re-imburement of \$4.00 for hotel room rent and four meals at \$1.50 each.

There is no question that Carrier has the inherent right to require its employees to submit themselves for physical examination before returning them to duty. However, Carrier does have the obligation to render the examination within a reasonable time. From the factual situation as recounted, we think Carrier took an unreasonable length of time in this case. The physical examination should have been performed within five (5) days. (See Award 5537). We will therefore approve compensation in excess of 5 days, that is, for December 27, 28, 29, 30, and 31, 1969 and time and one half for January 1, 1970. We decline that portion of the claim for expenses, since there is no substantiation for them in this record.

AWARD

Claim sustained as expressed in findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1972.