

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 6569
Docket No. 6359
2-SCL-MA-'73

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under terms of the Agreement Machinist D. W. Diegel was unjustly held out of service the period January 13, 1971, through February 27, 1971.
2. That accordingly the Seaboard Coast Line Railroad Company be ordered to compensate Machinist Diegel eight (8) hours pro rata rate of his assigned position each day January 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31, February 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, and 25.

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 pertinent facts are not in dispute: On December 24, 1970 Claimant reported off duty because of pain in his leg and knee. He was treated by his personal physician. On January 13, 1971 Claimant reported for work with a "release" from his personal physician stating that Claimant was "now able to return to work without hazard to himself or others." Included in this "release", however was a notation that "He Claimant was earlier treated for cervical sprain and asthenopia (referred to ophthalmologist)."

Carrier's General Foreman denied Claimant permission to return to work on that day because approval was needed by Carrier's Chief Medical officer located in Jacksonville, Florida. After several days Claimant had not been notified that he was cleared to return to work, and he attempted, without success, to be examined by a Carrier doctor.

Upon receiving the "release", Carrier's Chief Medical officer, on January 15, 1971, requested from Claimant's personal physician detailed elaboration and explanation of the release. A copy of this letter was sent to Claimant with a request that Claimant also obtain a detailed report from his ophthalmologist who treated him for his eye problem.

On January 21, 1971 Carrier's Chief Medical officer received a report from Claimant's personal physician. This report was considered unsatisfactory, and the Chief Medical officer on January 25, 1971 again wrote to Claimant's private physician for the requested information. On February 26, 1971 Carrier's Chief Medical officer received a report that was apparently satisfactory and Claimant was approved to return to duty on February 26, 1971. Claimant returned to duty on February 28, 1971. (Carrier received a satisfactory report from Claimant's eye doctor on February 5, 1971).

The question to be determined in this dispute is whether Carrier's effort to determine if Claimant was able to return to work was arbitrary and capricious under the circumstances.

The Board finds that it was.

While it is established that Carrier may require Claimant to submit a statement from his personal physician regarding his physical condition, and may or may not, in its discretion, choose to accept such a statement, it is equally established that Carrier must make a determination of the Claimant's fitness within a reasonable period of time -- either by a report from a personal physician or by its own examination.

In this dispute Carrier elected to rely on Claimant's personal physician even though it could have made the same determination of fitness by Carrier doctors.

Once it was determined, for whatever reason, that the information requested from the personal physician was incomplete, erroneous or delayed, Carrier has an obligation to immediately make its own determination, through its facilities, of the Claimant's fitness to return to work. In this dispute, the date of that determination should have been January 21, 1971 -- the date Carrier received an incomplete report from the Claimant's personal physician. There was no reason, at that point, to assume that an acceptable report would have been received, if at all, by the personal physician.

If a man has a right to work under the agreement, he should not be deprived of that right by factors and forces beyond his control. Administrative delay, ineptitude, whim or arbitrariness -- either by personal physician or Carrier doctor will not be allowed to militate against a man who wants to work.

Having determined that January 21, 1971 was the date when Carrier was on notice that it should have conducted its own examination of claimant, and allowing 5 working days within which to conduct such examination, the Board finds that Claimant is entitled to be compensated commencing January 31, 1971.

A W A R D

Claim sustained consistent with the Findings herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch L.H.
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of September, 1973.