

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A.F. of L. - C.I.O.
((Carmen)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the rights of Carman C. A. Ruth, St. Louis, Missouri, when they unjustly withheld him from service September 19, through 22, 1972, inclusive.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Ruth in the amount of eight (8) hours per day at straight time rate for each of the dates September 19, 20, 21, and 22, 1972.

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.

In February, 1970, claimant underwent an operation to correct a detached retina of one of his eyes. After a period for recuperation Claimant was released by his personal physician who reported he could return to work. Carrier required that Claimant be examined and his return to work approved by doctors at Sutter Clinic, St. Louis, Missouri, who serve as company medical officers, prior to being restored to service. Claimant satisfied this condition and recommenced working in July, 1970, subject to reexamination by Carrier medical officers one year later. In May, 1971, Claimant was required to undergo a second operation on his eyes and when released as fit to return to duty by his personal physician, was again required to submit to an examination by Carrier's medical officers prior to being permitted to resume working. Approval by Carrier doctor enabled Claimant to return to his position in September

1971, subject to reexamination the following year.

Accordingly, on September 15, 1972, Claimant was instructed by letter from Carrier's Superintendent to submit to an examination at Sutter Clinic. On September 18, 1972, Claimant reported to the office of Carrier's Master Mechanic where he was given the necessary eye examination papers and he then went to the clinic and was examined.

Claimant alleges that when he executed the required papers and was given examination report forms in the Master Mechanic's office he was told that he would be notified by mail when he could return to work. Four days subsequent to the medical examination, not having received a report approving or disapproving his return to duty, Claimant reported to the Carrier's Personnel Office to ascertain whether he would be eligible for unemployment insurance benefits pending action by Carrier's medical officers. Personnel contacted the Master Mechanic's office and learned that according to that office's view, Claimant should not have remained away from work following the medical examination. Claimant was advised to return to work at his regular scheduled time September 25, 1972, but that he would not be paid for four days, September 19 through September 22, 1972. He filed his claim for four days pay on September 23, 1972.

Carrier vigorously denies that Claimant was instructed to remain out of service pending determination by the Chief Medical Officer that he was physically fit to perform his duties properly and safely. However, the record does not contain documentary support for this averment to controvert the statement by Claimant in his grievance that this was the instruction given him by a clerk in the Master Mechanic's Office on September 18, 1972. Nor do we have evidence that Carrier's policy and practice relative to medical reexaminations at specified intervals, post return to work following significant illness or injury, had been communicated to employees involved in such procedures. Claimant's experience during the more than two year period prior to September, 1972, had been that he was held out of service until the Carrier's Chief Medical Officer had approved his return to work. Significant is the fact that the General Foreman in the train yard, who handles day to day absences of employees, apparently made no effort to ascertain the reason for Claimant's failure to cover and protect his job without calling in to explain his absences on those four days.

It is evident that whatever misunderstanding arose, it was due to inadequate administration and communication of Carrier's program relative to follow-up physical examinations by management, and Claimant should not be required to suffer therefrom.

Form 1
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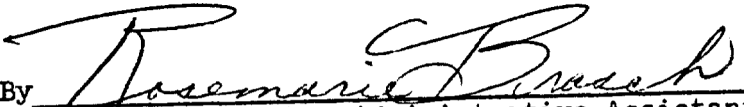
Award No. 6697
Docket No. 6603
2-MP-CM-'74

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of May, 1974.