

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 121, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That the Texas and Pacific Railway Company withheld Electrician E. H. Eaton from service without just and sufficient cause during the period from March 13, 1972 to March 22, 1972.
2. That, accordingly, the Texas and Pacific Railway Company be ordered to compensate Electrician E. H. Eaton for a total of 56 hours at the pro rata rate; eight (8) hours for each of the seven (7) days he was unjustly withheld from service.

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 had been out of service due to illness since January 8, 1972 when, on March 11, 1972, he reported to the Master Mechanic with a release from Dr. Sealy, his personal physician, stating that claimant was able to return to work on March 13. On March 13, Dr. Chalmers a Company physician, examined claimant and found him physically fit to return to service. This report, however, was forwarded to Dr. Rouse, Carrier's Chief Medical Officer, in St. Louis, Missouri, who signed a statement on March 22 that claimant could return to service. He returned to work on March 22 and he is requesting compensation for the period March 13 to March 22 when he was not allowed to work.

Since claimant underwent a hernia operation which resulted in his being out of service for 56 days, Carrier certainly had the right to require claimant to be examined by a Company medical officer and a review of that determination rendered by its Chief Medical Officer. This was consistent with Carrier's obligation to see that its employees are physically qualified to perform the service required of them. Yet, Carrier has the obligation to render the examination within a reasonable time. And this Division concluded in Award No. 6629 that five days was such a reasonable time. We can perceive no reason to depart from such criteria, even though there has been no showing of deliberate delay on Carrier's part.

We thereby conclude that since Carrier required that claimant's fitness to be returned to service be determined by its Chief Medical Officer it was obligated to have such determination made within five days of March 13, the date he returned to service, or by March 18, 1972. Since Carrier failed to do so we will allow the claim for the period March 19, 1972 to March 22, the date he returned to service.

A W A R D

Claim sustained to the extent indicated in the Findings.

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 22nd day of May, 1974.