

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

Parties to Dispute: { System Federation No. 6, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That Carman David Carter, hereinafter referred to as the Claimant, was improperly withheld from service for thirty-five (35) days commencing February 10, 1972, through March 29, 1972.
2. That accordingly, the Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the Carrier, be ordered to pay Claimant Carter eight (8) hours at the pro rata rate for each of the thirty-five (35) days listed plus holiday pay for Washington's Birthday and Good Friday.

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.

Claimant's conduct at work during 1970 required examination by the Carrier's Chief Surgeon. In a letter dated November 27, 1970, the Chief Surgeon approved claimant for work provided that claimant would continue treatment and medication and that regular reports would be furnished by the treating physician to the Chief Surgeon. The claimant did not comply with these conditions but was permitted to continue at work because his condition seemed to be improved. However, during late 1971 and early 1972, claimant's condition deteriorated. On February 9, 1972, his conduct was such that his continued presence at work presented a hazard to his fellow employees. These facts are not contradicted.

As a result of his conduct on February 9, 1972, the claimant was withheld from service commencing February 10, 1972 and temporarily medically disqualified from service pending reexamination by the Carrier's Chief Surgeon. The claimant was notified on March 29, to return to work.

The Organization has argued that claimant was improperly withheld from service from February 10, through March 29. The Carrier has contended that the period of time out of service was necessary for a proper medical examination by a qualified specialist who was not available immediately and whose tests took more time than usual. The Carrier also contended that in any event, the claim was barred by the sixty day time limit for presenting claims.

It is not denied that the General Chairman discussed payment in conference with the proper Carrier officer and was asked to wait until inquiry could be made of the Claim Department. Immediately after receiving word that the time claim would not be paid, the written claim was presented. We find that the request to wait for a reply, in this instance amounted to an extension of time to file the written claim which was presented without delay.

The decisions of this Board in prior Awards have established the Carrier's right to withhold an employe from service pending a medical examination when reasonable grounds are present for doing so. The grounds in this case as appear in the record justified the Carrier's action. The Awards do provide however, that the examination should be held within a reasonable time, usually five days, Awards No. 6278, 6331. In this case, the nature of claimant's problem required examinations by a specialist. Under the circumstances of this case, a five day period for examination was obviously inadequate. Also, claimant was at fault for not continuing his treatment when he was returned to work in November 1970, as he was required to do. It is not unreasonable in this case to provide ten days for the medical examination. Accordingly, we find that claim for pay should be allowed for all time lost beginning February 20, through March 29, 1972, without however considering this unusual case as a precedent.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July, 1974.