Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7151
Docket No. 6939
2-PCT-EW-'76

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (System Federation No. 1 (Formerly System Federation No. 103) Railway Employes' Department, AFL-CIO (Electrical Workers)
(Penn Central Transportation Company

Dispute: Claim of Employes:

1. That on and during the calendar date December 28, 1972, to and including March 29, 1973, Carrier violated the schedule agreement, particularly Rules 31, 36, and the Physical Examination Agreement when they withheld Electrician J. F. Neiner from active service by reason of an unwarranted medical disqualification.

2. That accordingly, the Penn Central Transportation Company be ordered to make the Petitioning Claimant, Electrician J. F. Neiner whole for all monetary damages suffered as a result of this infraction, to the extent shown in the following table or schedule of claim totaling $3,654.00.

66 pro rata days @ 42.00 per day	$2,772.00
12 punitive days @ 63.00 per day	756.00
2 punitive holidays @ 63.00 per day	126.00

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 left active employment on October 13, 1972. He was hospitalized on November 17, 1972 and thereafter was treated with psychotherapy, tranquilizers and theraputic home visits.

On December 27, 1972, Claimant reported for work and produced a statement, dated the preceeding day, from his personal physician, which stated:

> "As of this date, from the medical standpoint, ... /claimant/ is capable of returning to work. He has been under my care for a nervous condition from November 17, 1972 to the present date and will continue in treatment at the office."

Carrier's Medical Department sought additional information from Claimant's physician, who, on January 9, 1973, elaborated upon his recommendation and stated that Claimant was required to use "serax", "chloral hydrate" and "benedryl" as medication. Carrier refused to restore Claimant to active service.

Thereafter, the parties complied with contractual procedures for submission of the question of ability to return to work to a neutral physician. After examination, the selected Doctor recommended (on March 22, 1973: received by Carrier on March 29) that Claimant be restored to service, which was done on March 30, 1973.

The Organization claims monetary damages for the period December 28, 1972 to and including March 29, 1973, contending an unwarranted and extensive medical delay in returning Claimant to active service.

The Employees have urged the applicability of certain Awards which require that physical examinations be given within a reasonable period of time. See, for example, Awards 6331, 6363, 6629, 6569, among others.

But, we do not view those Awards as controlling here. As this writer noted in Third Division Award 20344:

> "... each individual circumstance must be considered upon its own individual merits."

Surely, the Carrier cannot be held to have acted unreasonably when it refused to restore Claimant to service based upon the short conclusionary medical statement of December 26, 1972 (cited above). See Award 6593. Rather than merely dismissing the matter, Carrier sought additional information which was supplied on January 9, 1973 - which showed that Claimant was required to take certain medication, described in the record (as handled on the property) as "psychotropic". That record shows that serax is a minor tranquilizer, chloral hydrate is a hypnotic and benedryl is an antihistimine with a sedative effect. Based upon that information, and a physical examination administered by Carrier's Medical Department, it was determined that Claimant was unable to "... work for safety reasons at the present time." Thereafter, Claimant utilized the provisions of the Agreement between the parties for resolving disagreements between personal and Carrier physicians and the matter was submitted to a "... third and disinterested doctor", whose opinion "... shall be conclusive and binding on all parties."

When the disinterested physician issued his opinion that Claimant "... is able to return to work without any qualifications while taking the above medication.", Carrier complied and restored him to service.

The Agreement between the parties does not appear to control in specific terms, the question of compensation when a Claimant is restored to service by a neutral physician. Under those circumstances it is incumbent upon this Board to determine if the withholding from service was arbitrary and unwarranted under the circumstances.

Had the neutral physician's recommendation been based upon the same factors and circumstances which existed (and were known to Carrier) at the time Carrier refused to restore Claimant to service, or if there had been significant change in condition which Carrier knew, or reasonably should have known, then those factors would surely be of paramount importance to our decision. But, in this case, there was a totally different set of circumstances existing when the disinterested doctor issued his report. The report states:

> "He has tolerated the medications well and is only taking serax..."

Thus, at the time of the report, Claimant (although still taking a minor tranquilizer) was no longer taking hypnotic or sedative medication. We find nothing of record which suggests that Carrier knew, or reasonably should have known, of the change in the required medication prior to the report.

We are well aware of the serious consequences to an employee when he or she is withheld from service. We are equally aware of a Carrier's duties and responsibilities in the area of physical capabilities of its employees. Suffice it to say that a rule of reason must be applied in reviewing Carrier's action.

Upon a review of the entire record, with particular attention given to the alteration of the type of medication to be taken, we are not able to find that Carrier acted in an unreasonable manner in this case.

A W A R D

Claim denied.

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 29th day of October, 1976