

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

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

Dispute: Claim of Employee:

1. That the Texas and Pacific Railway Company withheld Carman Luis Herrera from service without just and sufficient cause during the period from February 26, 1975 through April 13, 1975.
2. That, accordingly, the Texas and Pacific Railway Company be ordered to compensate Carman Herrera eight (8) hours for each day beginning February 26, 1975 through April 13, 1975 at the pro rata rate, account Carrier unjustly withholding him 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 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.

The Claimant, Carman Luis Herrera, alleges that the Carrier improperly withheld him from service during the period February 26, 1975 through April 13, 1975, after he had submitted a signed release from his personal physician on February 26 that he was "able to return to work," following an operation on January 10, 1975. Claimant therefore seeks compensation for the period from February 26, 1975 to April 13, 1975. Claimant is based in El Paso, Texas.

On February 28, on March 17, and again on April 1, Claimant was examined by a Carrier local physician. Following the April 1 examination, Claimant was advised that he would be released for service, subject to approval of Carrier's Chief Medical Officer in St. Louis, Mo., in accordance with company policy. Claimant was notified at 9:00 a.m., Monday, April 14, 1975, that he could return to work, at which point he asked for and was granted two weeks vacation. He finally resumed service, after the two-week vacation, on April 28.

The issue before us is whether Claimant was subjected to undue delay after April 1, 1975 in receiving final notice of the decision that he could return to work, after having been judged fit by the Carrier's local physician on that date to resume service.

In examining the record, we find that on two occasions prior to April 1, 1975, Claimant presented himself to Carrier's local physician for examination to return to work. On each such occasion, Claimant told Carrier's local physician that he was not feeling well enough to return to work. Each time, Carrier's local physician suggested that Claimant go home and recuperate. Finally, on April 1, 1975, Claimant reported to Carrier's local physician and stated that he felt good enough to return to work. In light of Claimant's own actions, we find that he voluntarily withheld himself from service up to and including the date of April 1, and we will deny that part of the claim.

Addressing the period of time from April 1 to April 14, 1975, encompassed within the Statement of Claim, we will review the record herein and apply the principles established by our previous decision to the facts of record. The record shows that after examination by a local physician on April 1, the results of this examination were forwarded to Carrier's Chief Medical Officer. It was not until April 14 that Claimant was advised that the Chief Medical Officer had approved his return to work.

In our Award 7131, involving these same parties, we found that unless there were unusual circumstances, five (5) working days was a sufficient amount of time for Carrier's Chief Medical Officer to evaluate physical examination reports and notify the employee of the approval or disapproval to return to work. In our Award 7089, again a decision involving these same parties, we found that in certain instances, days the Chief Medical Officer did not work should be excluded from the count. Here, we find no extenuating circumstances which would seem to justify that an additional amount of time was required to review Claimant's medical files. We accordingly find that Claimant should be compensated for the dates of April 7 through 11, 1975.

While we have considered the fact that Claimant, upon his approval to return to work, arranged to take a vacation "to go out of town," we have not considered this in reaching our decision. The reason is that Claimant's vacation request was not known to the Carrier at the time it was evaluating Claimant's physical condition. We would suggest, however, that as a matter of courtesy, Claimant should have made his intentions known during this period.

A W A R D

Claim sustained to the extent indicated in our findings.

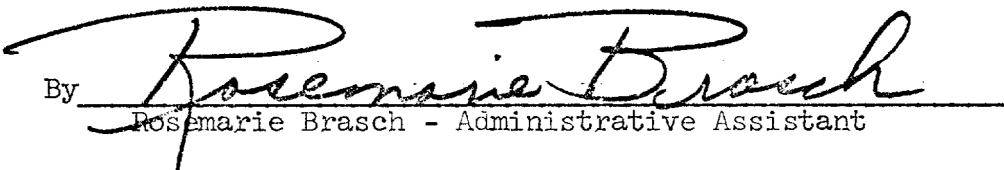
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Award No. 7472
Docket No. 7254
2-T&P-CM-'78

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 24th day of February, 1978.