

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling agreement when they denied Carman W. M. Joyner his rights to service February 27, 1976 through March 16, 1976.
2. That the Seaboard Coast Line Railroad Company be ordered to compensate Carman W. M. Joyner, one hundred and four (104) hours at pro rata rate, all overtime he may have made, and that he be made whole for all other benefits accruing to his position and in addition, he be compensated 6% interest compounded on the anniversary date of the claim.

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 alleges that he was wrongfully held out of service between February 27, 1976 up to and including March 16, 1976.

Claimant was injured on the job March 14, 1974, but continued to work until September 9, 1974. On September 10, 1974, Claimant was marked off for surgery and did not report back to work until February 27, 1976, on which date he physically presented himself at the Carrier's Shop Superintendent's office. At this time, Claimant produced a copy of a complete medical release without restriction letter signed by Claimant's attending physician and dated February 19, 1976. Contrary to Claimant's expectation he would be allowed to begin work that day (February 27, 1976), he instead was instructed by his supervisor to return home until notified by the Shop Superintendent's office as to when he would be allowed to come back to work.

The record reflects the original medical release letter dated February 19, 1976 and signed by Claimant's attending physician was addressed and sent to the Carrier's Chief Medical Officer. However, the Chief Medical Officer did not receive said medical release letter until March 2, 1976. Following receipt of the letter, the Chief Medical Officer scheduled Claimant for a physical examination for March 16, 1976.

The Organization contends the Carrier violated Rules 15 and 32 of the Controlling Agreement dated January 1, 1968, arguing that: Claimant was physically able to perform the duties of his job on February 27, 1976, the date he presented himself for work; and that under the provisions of Rule 15, Claimant held seniority rights to his assigned position. Thus, the Organization maintains, the twenty (20) day hiatus which occurred between the date Claimant presented himself for work and the date Carrier certified he was in fact physically fit to return to work, actually constituted a disciplinary action penalizing Claimant's wages and benefits without due cause and therefore was in violation of Rule 32 which deals with the subject of disciplinary hearings.

It is the Carrier's position, that neither of the aforementioned rules cited by the Organization were violated and in addition, in view of the circumstances involved in the instant case, the amount of time required to examine Claimant was not excessive.

In reviewing the record, the Board finds no justification to support the contention that Rules 15 and 32 of the Controlling Agreement were violated. However, the Board does, in part, find meritorious the position that the delay of twenty (20) days in putting the Claimant back to work was excessive, especially so in view of previous awards from this same property (6331, 6363, 6569, 6629, and 7247), which have established five (5) days as a reasonable time for Carrier to conduct a re-employment examination subsequent to an extended period of absence.

The Board notes that the twenty (20) day interval in question in the instant case, was the result of delays incurred by both the Claimant and the Carrier. Even though the Claimant's medical release letter was dated February 19, 1976, nevertheless, it was not received by the Carrier's Chief Medical Officer until March 2, 1976. Since the Carrier could not schedule an examination for Claimant until receipt of Claimant's medical release letter from his personal physician, the Board believes it would be unfair to hold the Carrier liable for the portion of the delay for which Carrier had no control over. Based on this rationale, the Board determines the five day formula should become operative beginning March 2, 1976, the date Carrier received Claimant's medical release information. Therefore, the Carrier should have examined Claimant no later than March 7, 1976. Thus it is the judgment of the Board that the claim be sustained in part and that Claimant be compensated for all time lost after March 7, 1976 up to and including March 16, 1976.

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Award No. 7924
Docket No. 7816
2-SCL-CM-'79

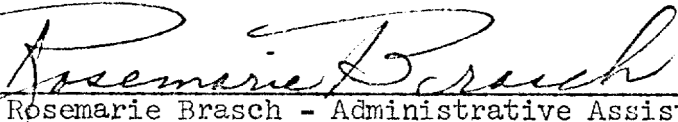
A W A R D

Claim sustained in part as per 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 16th day of May, 1979.