

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That the Missouri Pacific Railroad Company violated Item 6 of the Conditions of Employment when they withheld Carman L. LaCroix from service for special medical examination from February 28, 1977 until March 11, 1977.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman L. LaCroix for eight (8) hours at the pro rata rate for March 8, 9 and 10, 1977.

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 dispute herein is another in a series concerning the time limits imposed upon a Carrier when an employee returns from a disability absence and presents himself, as may be required, for examination by the Carrier's medical officials. In this instance, the Claimant was released by his own physician for return to work on February 26, 1977 (a Saturday), and he reported for work and was directed to take a physical examination at the Carrier's medical facilities on February 28 (Monday). The Claimant's regular work schedule is Monday through Friday. The record shows that the Carrier received clinical information concerning Claimant's examination on March 3. He was advised on March 10 that he could return to work, which he did on Friday, March 11.

The Organization does not dispute the right of the Carrier to have employees returning from disability absence submit to a physical examination and subsequent medical clearance. The Organization argues, however, that previous awards of the Board have established five working days as a limit during which returning employees may be withheld from work.

In this instance, the Carrier does not disagree, but claims that the five-working-day limit begins to toll after the Carrier's Chief Medical Officer has received the results of the physical examination for his consideration. In this case, he received the information on March 3 and released the employee for return to work five working days later on March 10.

The Board recognizes, as do the parties, that this matter is not governed by Agreement rule. It is obvious, however, that if a Carrier could withhold a returning employee from service for an indefinite period, then the employee's seniority rights under the applicable Agreement would, indeed, be affected. Likewise, there is no dispute that the Carrier is entitled to a reasonable period to make its medical determination.

The reasonable period, absent complications applying to a particular case, has been determined through previous awards as five working days. See Award Nos. 7472 (Weiss), 7131 (Sickles) and 6704 (O'Brien). Logically, the word "working" as in "five working days" applies to the time available to the Carrier's medical officer, not a particular employee; i.e., Monday through Friday.

The Board does not agree with the Carrier's argument that the five working days begin only after all tests are completed. Were this to be accepted, it would mean that such tests might take an indefinite period of time, to the detriment of the employee's right to resume work. In the absence of complications or the requirement for unusual testing, the Board finds that the five-day limit began with the day following the examination (Tuesday, March 1) and ended with Monday, March 7. Since the Claimant was not permitted to return to work until March 11, the claim for the intervening days (March 8, 9 and 10) is proper.

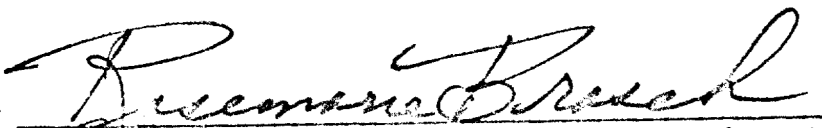
A W A R D

Claim sustained.

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 27th day of September, 1979.