Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8251
Docket No. 8206
2-SLSW-CM-'80

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. 45, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

1. That the St. Louis Southwestern Railway Company violated the terms of the controlling agreement and the Railway Labor Act when it posted notice to ALL EMPLOYEES, PINE BLUFF CAR HEAVY MAINTENANCE PLANT on December 6, 1977, requiring employees returning to work after absence account ailments such as heart trouble, strokes, major injuries sustained off duty, or any physical condition which might impair their work performance to present a release from attending doctor and this release should include:

   A. Nature of illness
   B. Type of treatment
   C. Any permanent disability
   D. Release to return to any and all the duties of his assignment

   This release must be obtained from the doctor by the employee himself.

2. That the St. Louis Southwestern Railway Company be ordered to rescind the notice to All Employees, Pine Bluff Car Heavy Maintenance Plant, dated December 6, 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 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.

This claim is a protest concerning Carrier's Plant Manager issuing a letter of instruction to all employees at the Pine Bluff Heavy Maintenance Plant by notice dated December 6, 1977 as specified in the claim, cited above.

The notice is protested by the employes as a unilateral change in the working conditions proscribed by the Railway Labor Act. Carrier, on the other hand, says it is necessary for the prompt and orderly physical examination of employes returning to work following illness and for their general safety and welfare and not in violation of any agreement between the parties.

For years, this Board has upheld the prerogative of management to require physical examinations of employes whenever sound medical judgment requires examinations by the employe's own physician, or the Carrier's physician, to determine his ability to meet Carrier's minimum physical standards. Within Carrier's prerogative is the right, in proper cases, to require medical information from the employe's treating physician so that a proper evaluation can be made. In many cases, the providing of this information serves to expedite the employe's return to work following serious illness or injury since Carrier's physicians can review the medical records and glean medical information necessary to make decisions without the need for further testing or examination of the employe. Thus, it is certainly in the employe's best interest to provide such information in proper cases.

However, a problem arises when Carrier tries to legislate an across-the-board requirement for employes in various categories of illness, and, for example, the Board cites the phrase in Carrier's notice applying to employes whose physical condition "might impair their work performance..." This is a subjective order, which requires a medical judgment to be made. Further, it may be that employes returning from illness due to other maladies described in the notice may not be in such a condition, upon their return, so as to require the information contained in the Carrier's notice. The applicable rule between the parties, Rule 15, provides that:

> "Employees shall not lay off from work without first obtaining permission from their foreman to do so, except in case of sickness, or for other good reason, in which case the foreman shall be advised as early as possible. When able to return to work, the employee shall notify his foreman in advance in sufficient time that proper arrangements can be made."

In interpreting this same rule in recent Award No. 7632, cited by the employes for support, the Board found that a blanket, specific reporting time for an employe wishing to return to work following absence was in error. There, the Board said:

> "And, conversely, if an employe has been absent due to sickness or injury for a protracted period, it may well be that a period longer than 16 hours would be required to make proper arrangements for the employe's return to work. Whatever the situation may be, it is obvious that the rule places upon the employe the obligation to be cognizant of the status of his particular situation so that when he does assert a desire to return to work, he can notify his foreman 'in advance in sufficient time' so that the proper arrangements can be made."

Thus, the Board has already made it clear to both parties that the rule places mutual responsibilities upon them. The determination of the amount of medical information needed in each particular situation of an employe seeking a return to work is a medical one; not for the judgment of laymen. And so, the Board again finds that this blanket instruction issued to all employes is in error in that respect. Obviously, the process of returning to work following

illness is subject to the expertise of Carrier's doctors. If an employe presents himself for return to work and Carrier's physician finds that the employe has not furnished sufficient medical data for the physician to evaluate the individual's condition, then the amount of time required by the Claimant to procure this information would, unfortunately, be at his expense. To that extent, Carrier's notice is certainly beneficial - it does put the employes on notice that in medical absences where illnesses described therein are involved, the employes might well consider obtaining such information before they seek to return to work, even if, in Carrier physician's opinion, such information was not necessary for him to make the necessary evaluation.

In summary, the Board believes the determination of the amount of medical evidence necessary to determine the physical ability of an employee to return to work must be a medical judgment made in light of the particular facts and circumstances in each and every case and, to that extent, Carrier's Plant Manager erred in his general notice. The meaning and intent of Rule 15, as noted in Award No. 7632, "... places upon the employe the obligation to be cognizant of the status of his particular situation so that when he does assert a desire to return to work, he can notify his foreman 'in advance in sufficient time' so that the proper arrangements can be made". In this light, the employe should be cognizant that, depending upon the medical facts and circumstances involved in his individual case, his reporting with a desire to return to work following illness or injury may be delayed at his expense if he fails to provide the necessary information. As the Board stated, in some cases Carrier's physician may determine that such information is not needed - or is needed - but again, that is a medical judgment which the Board is not qualified to make.

Thus, while the Plant Manager's notice may, in some cases, prove to provide good advice which would expedite an employe's return to work, it cannot be applied across the board to each and every situation. Medical qualifications and information pertaining thereto are for physicians, and not this Board or laymen, to interpret. The Board does, however, admonish the parties to apply Rule 15, and the return to work policy, in a reasonable manner and to cooperate with each other in recognizing the mutual obligations of the Carrier and the individual employes in these circumstances.

A W A R D

Claim disposed of as 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 20th day of February, 1980.