

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

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Carrier delayed an unreasonable amount of time returning Machinist Robert E. Kidwell (hereinafter referred to as Claimant) to service after completion of a return to duty physical by Carrier's Medical Department.
2. That, accordingly, Claimant be compensated for all working days after April 5, 1980, until and including April 29, 1980, at the daily rate of \$76.40 per day plus all overtime he may have been eligible for during this period.

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 employes 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 had been on medical leave of absence since March 23, 1979. Upon his initiative, the Carrier made an appointment to have him undergo a physical examination by a private physician on March 31, 1980. The results of this examination were received by the Carrier on April 9, 1980. The physician recommended a follow-up evaluation in one year and periodic checkups. In addition, he stated a concern about allowing the Claimant to return to duty if he had to work about moving equipment.

The essentials of the above medical report and stipulation for return to duty on April 24, 1980 were stated in Carrier's letter to the Claimant of that same date. The Carrier contends that the Claimant declined to sign the letter acknowledging the conditions for his return to work. Therefore, it formulated another letter, under the date of April 29, 1980, which contained the essentials of the April 24, 1980 letter, and sent it to the Claimant's residence. The Claimant then returned to work on April 30, 1980.

This dispute then came about because the Organization asserts that the Claimant was held out of service for an unreasonable period of time. As a remedy, it seeks wages for the Claimant for the period from April 5 through April 29, 1980.

Although there are certain procedural issues raised in the record, under the circumstances here, the Board will dispose of the claim on its merits.

Certainly, there can be no serious dispute, as supported by numerous past Awards of this Division, of the Carrier's obligation and right to medically evaluate its employees. Furthermore, the Carrier's responsibility to perform this function within a reasonable time frame has been well established. Accordingly, while certain Awards of this Division cite as reasonable a specific number of days to complete a medical evaluation process, we note that each case stands or falls on the circumstances presented by its individual merits and must be considered on the basis of the material submitted by the parties.

In the instant case, the Carrier, of necessity, had the initial physical examination performed by medical personnel other than its own physician. The report provided to the Carrier by the physician did place certain medical constraints upon the Claimant. Therefore, given the nature of the medical problems, and the further legitimate need to have it reviewed by the Carrier's medical and operating personnel after it was received, it is unreasonable to expect that all these procedures could be accomplished immediately. However, with full recognition of these factors, we find, after our review of the past Awards of this Division, that the time used by the Carrier, from April 9 (when it received the initial medical report) until April 24, 1981 (the date of the first letter), did exceed a reasonable period of time. Accordingly, we find that pay for eight work days is appropriate compensation in view of all of the circumstances of this record.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of April 1985.