

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc., formerly St. Louis-San Francisco Railway Company, violated (sic) the provisions of the current controlling agreement when they wrongfully and unjustly withheld Lead Car Inspector L. E. Wilson from service beginning August 4, 1980 up to and including November 13, 1980.

2. That accordingly, the Burlington Northern, Inc. be ordered to reimburse Lead Car Inspector L. E. Wilson for all time lost at eight (8) hours pay at the Lead Carman's rate of pay for each day of his regular assignment, commencing August 4, 1980 through November 13, 1980, at the straight time rate.

3. That he be reimbursed for each minute of overtime worked by employe or employes filling Mr. Wilson's assignment during the period withheld from service, at the time and one-half rate.

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 essential events in this dispute began on July 31, 1980, when the Claimant's physician released him to return to work following a period of absence caused by physical problems. On August 4, 1980, the Carrier's Medical Consultant recommended that the Claimant not return to work until he no longer required certain medication. The Claimant's physician recommended on August 11, 1980 that the Claimant be on leave of absence for another 60 days. The Carrier granted this request, and on September 25, 1980, the Claimant's physician recommended a 30-day extension, which was also granted by the Carrier. On October 27, the Claimant's physician stated that the Claimant was no longer taking medication and appeared to be ready to resume his employment. Three days later, the Claimant's physician furnished the necessary form to the

Carrier, indicating that the Claimant could return to work on October 30, 1980. The Carrier's medical consultant again examined the Claimant on November 6, 1980 and approved his return to duty. The Claimant actually resumed work on November 14, 1980.

It is well established in this industry that the Carrier has the right to establish and to enforce medical standards for its employees. Here, we have a case in which the Carrier's Medical Officer determined that the employee could not return to work while taking certain medication. From this record, we do not find that this was an unreasonable determination. This conclusion also is sustainable because the Claimant's physician requested the extended leaves of absence as above.

The only remaining issue to be decided is whether the period of time, beginning when the Claimant's physician notified the Carrier on October 27 (Monday) and ending when he returned to work on November 14, 1980 (Friday), was unduly delayed. The Carrier required the Claimant's physician to complete its "Physician's Release to Resume Work" form. This was completed on October 30, 1980, and the physician noted that the Claimant was medically fit to resume work on that same day (October 30). Carrier's requirement, in this regard, is not an abuse of discretion under the circumstances prevalent herein. However, at that point in time, it was up to the Carrier to respond promptly, either by accepting the Claimant's report at face value and returning him to work, or, as it did here, by scheduling its own examination, conducted on November 6, 1980. It then issued a statement on that date to the effect that the Claimant could return to work.

Numerous Awards have established that five days is a reasonable amount of time to conduct an examination after a request for such is received. Here, the Carrier was effectively notified on October 27 that the Claimant was ready to return to work. However, it did not complete its examination until November 6, and did not return the Claimant to work until November 14. The reason for the cumulative delay is not explained in the record and, given the physical proximity of the principals controlling the events here, this delay cannot be said to be reasonable since it deprived the employee of his right to an earning opportunity. We conclude on a constructed basis that the Claimant should have been returned to work on November 5, and that he should be paid at the straight time rate beginning with that date, through the day before the day when he actually resumed work activity (i.e., November 13, 1980).

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 16th day of April 1986.