

Award No. 10895
Docket No. 10747
2-C&O-CM-'86

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(The Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Carman Lester Snyder was unjustly and excessively withheld from service after he reported to the office of the General Car Foreman, Walbridge, Ohio, to notify that he was returning from sick leave to work and presented his doctor's release in writing in violation of Rules 18 1/2 and 37 of the Shop Crafts Agreement.

2. Accordingly, Carman Lester Snyder is entitled to be compensated 200 hours' pay (or 25 days - eight hours each day) at Carman's applicable pro rata rate of pay commencing five days after Snyder first reported to Carrier's office until his return to service on February 4, 1983, plus eight hours' pay for the date February 7, 1983 in lieu of said violation.

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.

This Claim is essentially a dispute that arose after the Carrier had withheld the Employee from service on the ground that he was not physically fit to perform his job.

The essential events began on December 17, 1982, when the Claimant laid off due to personal illness. The Carrier stated that the Claimant asked to work on December 23, 1982, and was told that he needed to provide a doctor's release, which later was given to the Carrier on January 3, 1983. The Carrier then made an appointment with its Medical Examiner to have the Claimant examined on January 5, 1983. This resulted in a "Temporarily Approved" determination that he could return to duty on that same date. Through this point in time, the Board concludes that the Carrier did not unduly delay the Claimant's return to work.

However, the record shows that he was not returned to work following the January 5 decision. Instead, his file was sent to the Carrier's Chief Medical Officer for evaluation. That Official concluded that the Claimant was not physically able to perform service and another examination was scheduled and performed on February 7, 1983. It was then determined that the Claimant was not physically able to perform his duties and he was removed from the service. However, in the interim, prior to this decision, he was permitted to return to work. In this respect, the Carrier's Submission before the Board and one of its letters on the property states that he returned on February 2, 1983; another letter from the Carrier is silent on this point. The Organization states in one of its letters that the Claimant returned to work on February 4, 1983. Thus, the record on this point, as well as some other correspondence, is not clear.

There is no question that the Claimant was seriously ill. The Claim before the Board stops on February 7, 1983 when he was finally medically disqualified. This case does not argue that the Carrier has no right to require its employees to submit to a physical examination as a condition for returning to duty. The issue before this Board is whether the Carrier, as it progressed its right to make a medical determination, acted in a reasonably prompt manner, as normally accepted in this industry. Surely, given the serious nature of the Claimant's physical problems, the Carrier's decision to consult its Chief Medical Officer cannot be said to be an imprudent use of its discretion. However, the Carrier is obligated to render the examination within a reasonable number of days and this Division has consistently held five days to be reasonable.

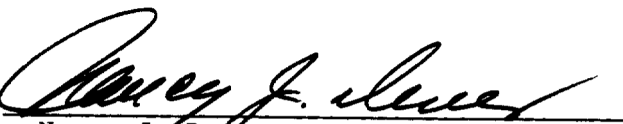
Accordingly, given the particular circumstances and following the principles of past Awards on matters such as this will establish a starting date of the examination of January 5, 1983, and hold that the Claim will be sustained for the period beginning January 11, 1983 until the date the Claimant actually was removed from the service. The days that he actually worked and was paid during the period, as established from the Carrier's records, will be deducted.

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 25th day of June 1986.