

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Kansas City Southern Railway Company

Dispute: Claim of Employees:

1. That the Kansas City Southern-Louisiana & Arkansas Railway Company violated the controlling agreement and the Railway Labor Act, as amended, when it failed to promptly return Carman Claude McDonald to service after he was released by his doctors.

2. That the Kansas City Southern-Louisiana & Arkansas Railway Company be required to pay Claude McDonald for the dates of March 26, 27, 28, 29, 30 and April 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1984. This claim is for eight (8) hours pay at the proper pro rata rate for each date claimed.

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.

Claimant was employed by the Carrier as a Carman at Shreveport, Louisiana. He was injured in an off-duty, off-property, automobile accident on February 2, 1984. The contention is made that Carrier unnecessarily delayed Claimant's return to work following the injuries that he sustained in the automobile accident. The Organization states, as it did in the on-property handling, that Claimant was under the care of a physician and an Orthopedic Surgeon from February 2, through March 19, 1984, and that Claimant was released by the Surgeon to return to work on March 20, 1984, but he was not permitted to return to work until April 16, 1984.

In the handling of the dispute on the property the Organization contended that Claimant had been released by the Orthopedic Surgeon to return to work on March 20, 1984, and that Claimant's personal physician had released him for duty effective March 30, 1984. It was also contended that Claimant had been examined by Carrier's designated physician on March 20, 1984. In the Carrier's response of September 26, 1984, it relied on a Report dated April 9, 1984, from Dr. M. E. Millstead, the same doctor who had issued Statement to Claimant dated March 13, 1984 stating: "Return to work Tuesday, 3/20/84." The Report of April 9, 1984, outlined what Claimant had been treated for and gave a prognosis of his recovery. The Carrier did not mention the reports of March 20, 1984, March 30, 1984, or whether Claimant had been examined by a Company designated physician on March 20, 1984. The Record does not contain any Report from a Company designated physician, although in its Submission to the Board the Carrier does state that Claimant was sent to Carrier's physician on March 20, 1984, and "was given a release pending X-Rays and a proper release from his treating doctor." It is well settled that the Board, being an Appellate tribunal, may only properly consider issues raised in the handling of the dispute on the property and that new issues and new defenses may not properly be raised for the first time before the Board. The issues raised for the first time before the Board will not be considered.

It is well established in the Railroad Industry that the Carrier has the right to establish and enforce physical standards for its employees. Discipline Rules of Agreements have no application in cases involving the physical condition of employees. However, in the case of an employee attempting to return to service following an absence, such as the one herein, the Carrier is required to respond promptly and make a determination within a reasonable number of days. The Board has rather consistently held five days to be a reasonable time for such determination.

Based upon our review and careful consideration of the record properly before the Board, we find and hold that Carrier did not act within a reasonable time to determine Claimant's condition. While the Report of March 20, 1984, may have been vague, the Report of March 30, 1984, was more specific. Also, in the opinion of the Board, Claimant should have been advised on March 20, 1984, when he was examined by a Carrier designated Physician, just what further Medical Reports may have been required. We find and hold that Claimant be paid for time lost beginning from five work days after March 30, 1984, until returned to work on April 16, 1984. He is awarded pay at the pro rata rate for April 9, 10, 11, 12 and 13, 1984.

A W A R D


Claim sustained in accordance with the Findings.

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Award No. 11123
Docket No. 11210
2-KCS-CM-'87

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 7th day of January 1987.