

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

1. That Carman N. H. Hartman, Jr. was unjustly and excessively withheld from Carrier service after he notified that he was returning from sick leave, in violation of Rules 22 and 37 of the Shop Crafts Agreement.

2. Accordingly, Hartman is entitled to be compensated in the amount of his current guaranteed rate of pay for each work day during the period February 19, 1985 to March 19, 1985 and for other miscellaneous costs in lieu of the violations.

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 facts in this case are that Claimant had no use of his left eye since 1936. On December 4, 1984, Claimant had corrective surgery in the form of a lens implant. On February 19, 1985, Claimant returned from sick leave and presented himself as released and able to assume his duties as a Carman. He presented as medical release his physician's prescription for eye glasses which indicated vision of 20/100+ with correction. Carrier indicated that such was not an acceptable release to return to duty. It scheduled a return-to-duty physical that same date and informed Claimant to secure the necessary medical release to return to duty from his physician. Carrier received same by letter of March 13, 1985, and released Claimant for duty on March 18, 1985. Claimant returned to work on the following day.

The Claim of the Organization is that Claimant presented a release to work form from his attending physician indicating he was able to return to service. Failure of the Carrier to permit Claimant to return to work until March 19, 1985 was a violation of Rules and past Awards that provide for five (5) days as sufficient time for Carrier's decision. The Organization points out that Claimant made three trips and paid express mail costs. The Organization further argues that the Carrier was arbitrary, capricious and abused its discretion.

As in all such cases the Carrier has a right to require that an employee show proof that he is fit to return to work after a medical leave. The Carrier can accept such proof or require a medical exam. If unsatisfactory, the Carrier may request additional information or exams that it deems necessary, but it must take action to expedite the employee's return to work or issue a decision that the employee is unfit.

In the instant case, the Carrier found the physician's prescription as an unacceptable release for work. No evidence of record indicates that the Carrier took any action thereafter by telephone or letter to obtain desired information within a reasonable time. Rather, the Claimant was requested to obtain information and there is evidence of record that he worked toward that end. There is no doubt that both must expedite the process. Although the Carrier required Claimant to take a physical, it requested no additional medical tests and took no other action of record until March 8, 1985.

The Carrier's exhibits of the February 14, 1985 prescription and Claimant's physician's letter of March 13, 1985 were referenced in the record on property. The letter indicates that Carrier contacted Claimant's physician by telephone on March 8, 1985 and was fully aware that Claimant's physician approved his return to work at that time. Nevertheless, the Carrier took no action until March 18, 1985 after receipt of the physician's letter of March 13, 1985.

In the case at bar this Board finds that the Carrier erred in not making its own evaluation of fitness within an appropriate time frame. That time began in these instant circumstances when Carrier found Claimant's release as no release at all, or unsatisfactory. Carrier took no action whatsoever to personally contact Claimant's physician to obtain the relevant information and clarify any concern. Nor, having given an examination which it did not see as determinative, did it require a more specialized examination to reach a final decision. Carrier determined to make the final decision based upon the Claimant's physician and yet made no attempt to clarify the situation. If, as evidence indicates, the Carrier's Medical Department could call on March 8, 1985 and receive clearance, it could have called within a reasonable time of Claimant's presentation to work on February 19, 1985.


In these particular circumstances, the Board finds that the Carrier acted in an inappropriate manner. As to the appropriate remedy, the Board finds that Claimant is entitled to pay beginning after five (5) working days following the physical examination conducted by Carrier on February 19, 1985 and continuing until Claimant was returned to work (Second Division Awards 6569, 6278, 6363 inter alia). There is no Agreement support for the additional claimed costs and such is therefore denied.

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 24th day of February 1988.