

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the governing Agreement, the Burlington Northern Railroad arbitrarily refused to allow Electrician Lawrence M. Thivel to return to service after recovering from an illness and being released for service by his personal physician.

2. The Burlington Northern again violated the Agreement when Electrician Thivel later presented additional documents attesting to his recovery and was again denied service by the Carrier.

3. That accordingly, the Burlington Northern Railroad should be directed to compensate Electrician Lawrence M. Thivel for all time he was denied service between Wednesday May 23, 1984 and July 11, 1984.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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, an Electrician at the Carrier's 14th Street Coach Yard facility in Chicago, Illinois, alleges that the Carrier improperly withheld him from service between May 23, 1984 and July 11, 1984.

The Claimant was absent from work due to illness from May 17, 1984 through May 22, 1984. On May 23, 1984 the Claimant submitted a statement from the "Doctor's Emergency Officenter" indicating that he had been treated for chest congestion, nasal congestion and productive cough going on for two months.

The initial issue to be resolved is whether the statement presented by the Claimant on May 23, 1984 constitutes a medical release authorizing him to return to work. Support for the Organization's position that the statement constitutes a medical release is based upon a letter from the Director, Employee Relations, to the General Chairman in which, in relevant part, he states:

"* * The Claimant had been absent because of illness and when he was released to return to work by his personal doctor, he was sent by the Carrier to the Clearing Clinic which determined that his medical condition was such that the matter should be referred to the Carrier's Chief Medical Officer * *." (Emphasis added.)

The Director, Employee Relations' statement concerning the release of the Claimant is contradicted by the Chief Medical Officer in a letter dated December 13, 1984. In his letter, the Chief Medical Officer, in relevant part, states:

"* * Our physician noted at that point in time that he had been off work since May 17 and he had not yet been released by his own treating physician."

Except for the Director, Employee Relations' statement, there is nothing in the record to indicate that the Carrier treated the statement presented by the Claimant to the Carrier on May 23 to be a release. On its face the statement fails to disclose that the Claimant has recovered from his symptoms and is able to return to work. In fact, at the Carrier's request, the Claimant underwent a medical examination from Dr. Boyd at the Clearing Clinic on May 23, at which time the decision authorizing the Claimant to return to work, was referred to the Chief Medical Officer. On the basis of the May 23, 1984, examination, the diagnosis of the Claimant was that he had bronchial pneumonia. Moreover, the examination disclosed that the Claimant continued to suffer from dizziness and shortness of breath. The medical examination of May 23, 1984, and deferral of a decision authorizing the Claimant's return to work constitute objective evidence that the Carrier did not believe that the statement from the Claimant's doctor on May 23, 1984 was a medical release. The Carrier's actions concerning the Claimant on May 23, 1984 are consistent with "the right of the Carrier's Chief Medical Officers to set and maintain reasonable and necessary medical standards." Second Division, Award No. 10928.

Addressing the next issue, this Board cannot conclude that the Claimant submitted a medical release to the Carrier on May 30, 1984. Among the two (2) documents that were sent to the Carrier on May 31, 1984, one (1) document is a completed form of the Provident Life and Accident Insurance Company. This form is presented to the Insurance Company in order to receive payment for a Claim for sickness benefits. This Board is persuaded that the Claim for sickness benefits was not presented to the Carrier. Indeed, the form indicates that upon completion it is to be mailed "to the office where [the] Claim will be handled as shown on the reverse side of the form."

The office where the Claim is handled is the office of the Insurance Company. The form is also signed by the Claimant's attending physician on May 31, 1984. The form also shows that the Claimant first consulted the doctor on May 31, 1984. Thus, the form could not be in the Carrier's possession on May 30, 1984.

The second document, a completed "Application for Sickness Benefits" was presented to the Railroad Retirement Board in order to receive payment for sickness benefits. This document was also signed on May 31, 1984 by the Claimant's attending physician; as a result, it could not have been given to the Carrier on May 30, 1984. Both documents signed by the Claimant's attending physician indicate that the Claimant has recovered and is able to return to work on May 31, 1984. Despite these statements, the two (2) documents cannot be considered as medical releases. The documents serve a different purpose than a medical release; furthermore, they were not submitted to the Carrier.

The Claimant was not approved by the Carrier to return to work until July 11, 1984. The Carrier's decision was prompted by a telephone call from the Claimant's wife to the Carrier's Medical Department in which she advised the Department that the Claimant had been released by his physician. This information was received by the Medical Department on July 6 and reviewed by an associate Medical Officer on July 9. The Organization indicates that "[U]nder the conditions as they existed, the Claimant * * had no option but to await the Company's call at his home. * * He had not been advised that he was withheld from service * * he knew only that his test by the Company doctor [on May 23] had been passed on the Chief Medical Officer." However, based on the record this Board cannot conclude that the Organization has satisfied its burden of proving that the Carrier is solely responsible for the delay prior to its receipt of doctor's report of the Claimant. As stated in Second Division, Award No. 10738, "* * the Board has no evidence of whether the delay was caused by the Carrier in requesting the information, the Claimant in relaying the request to the doctor, or his doctor in complying with it." As applied to the facts of this case, the Board has no evidence of whether the delay was caused by the Carrier because it had not yet received a release from the Claimant's doctor, "the Claimant in relaying the request to the doctor, or his doctor in complying with it." Accordingly the Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1988.