

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That the Southern Pacific Transportation Company did violate the Controlling Agreement, Rule 25(b) and 39 in particular, when it arbitrarily withheld Sheet Metal Worker H. T. Gregory from service.

2. That the Carrier pay claimant 8 hours pay per day for 9 days at his pro rata rate while wrongfully withheld from service, beginning on the 6th day from the day claimant delivered Carrier's completed medical form to Carrier's Chief Medical Officer.

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 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.

After notification to the Carrier on January 15, 1986, Claimant remained under his doctor's care during the period January 15, 1986, through February 18, 1986, for hypertension. By note dated February 14, 1986, Claimant was released by his doctor to return to work effective February 18, 1986. Claimant reported for duty on February 18, 1986, and presented his doctor's release at that time. On that date, the Carrier required Claimant to take a physical examination. On February 24, 1986, the Carrier mailed Claimant a Form 5662 for completion by Claimant's doctor. Claimant received the form on February 25, 1986, and had it completed and returned to the Carrier on the same day. The form again indicated that Claimant could return to work. Claimant was not permitted to return to work until March 10, 1986, - fourteen working days after he first presented himself as capable of returning to work.

On the basis of evidence properly in the record, we believe that the Organization's position is well-taken that in this case (consistent with awards cited by both parties) five days is a reasonable period of time for the Carrier to have completed whatever further examinations it felt were necessary after being advised by Claimant that he was released by his doctor. Here, Claimant gave evidence from his doctor on February 18, 1986, that he was capable of returning to work as of that date. The Carrier thus had a reasonable period of time from that point to make its determination of Claimant's fitness for returning to service. Claimant was required to take a physical that day and did so. Nothing was done until February 24, 1986, when the Carrier sent Claimant the Form 5662. We can find no evidence of delay in the record attributable to Claimant or his doctor that could extend that reasonable time period for making the necessary determinations. The Carrier's argument that the time period should not commence running until February 25, 1986, when it received the completed Form 5662 thus indicating delay by Claimant is not supported by the record. As noted, the evidence shows that the Carrier did not mail that form to Claimant until February 24, 1986, and Claimant had it completed and returned to the Carrier on the next day.

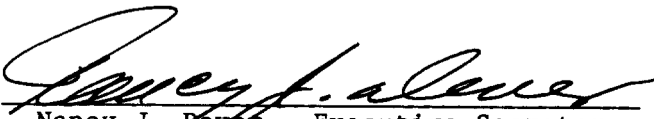
Claimant shall therefore be compensated for nine working days at his pro rata rate.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1988.