

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer N. Washington, Chicago, Illinois, was improperly withheld from service account of the Chicago and Northwestern Transportation Company failing to restore him to service after medical release from his doctor.

2. That, accordingly, the Chicago and Northwestern Transportation Company be ordered to compensate Mr. Washington for eight hours per day at the pro rata rate, five days per week, effective November 9, 1988 and continuing through December 5, 1988.

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 were given due notice of hearing thereon.

The basic facts of this case are set forth as follows:

1. Claimant had been on a medical leave of absence for about two years prior to November 1, 1988.

2. He presented a letter dated October 31, 1988 from his personal physician to Carrier's Medical Director on November 1, 1988. This letter reads:

"Mr. Nathaniel Washington continues under my care for recurrent tension headaches, and tempo manidular joint pain. He is planning a return to work for October '18, 1988 with non-restrictive duties, on returning to work his only medication will be Naproxen Sodium 500 mg twice a day. This medication is mainly an anti-inflammatory, and should not cause sedation or qualify as a sedating agent."

3. Carrier's Medical Director did not believe said note was an unequivocal release for Claimant to return to work and requested further clarification and affirmation from Claimant's personal physician.

4. On November 14, 1988, the Medical Director wrote the following letter to Claimant:

"As I stated to you on the phone on November 9, 1988, and as I have previously stated to both you and your union representative, I simply need a release from your doctor stating that 'he feels you are medically able to return to unrestricted work and that you can perform safely on the medication you are taking.' Once your doctor feels safe in giving that statement from a medical point of view, I will be glad to schedule you for your return to work examination.

If you have any questions, please do not hesitate to contact me."

5. On November 18, 1988, Carrier's Medical Director received the original letter with the following addendum written at the bottom of the letter.

"11/18/88 - addendum - PT is medically able to return to unrestricted work and should be able to perform safely on his current medications."

There is a dispute as to whether Claimant himself hand delivered the letter to the Medical Director or whether Claimant's wife delivered the letter. Claimant asserts that his wife delivered the letter on November 18, 1988, while Carrier contends that Claimant delivered the letter. Claimant also contends that the Medical Director made no offer to examine him on November 18, 1988, while Carrier contends that the Medical Director did in fact, make such offer. Claimant maintains that he called the Medical Director's office to arrange for a physical and was told the Medical Director was on vacation. (Presumably for the week of November 21, through November 25, 1988.) This was denied by the Medical Director who indicated that the only dates he was not available for examination appointments between November 18 and 28, 1988 were on the weekends and the Thanksgiving holiday.

6. Claimant was examined on November 28, 1988, and released for full duty by Carrier's Medical Director on November 30, 1988. He attended a safety training class on December 5, 1988, and returned to full duty on December 6, 1988.

In considering this case, the Board finds Carrier's actions defensible from November 1, 1988, through November 30, 1988. Carrier had the right to require clarification of the October 31, 1988 medical letter and unambiguous affirmation that Claimant was indeed capable of returning to work without restrictions. As to what exactly transpired on November 18, 1988, there is a diametrical standoff in the parties positions, particularly as to whether Claimant himself delivered the letter and whether he was offered a medical examination that day. There is also a dispute as to whether Claimant was apprised by the Medical Director's office that the doctor would be on vacation. In view of this impasse and the lack of corroborative credible evidence to substantiate either position, the Board cannot verify either version. To be sure, Claimant made a sincere effort to return to work via his submittal of the October 31, 1988, medical letter, but the Medical Director's justifiable caution warranted the additional medical information. Claimant had been on a medical leave of absence for two years and precaution was not unreasonable under these circumstances. On the other hand, Claimant should have been returned with much greater dispatch after his effective clearance on November 30, 1988 and as such, we will award him four days pay at the then applicable pro rata rate. This covers the period December 1, 1988, through December 4, 1988.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1991.