

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12484
Docket No. 12112
92-2-90-2-234

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(CSX Transportation, Inc. (formerly the Chesapeake
and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "Carrier") violated the provisions of Rules 18-1/2, 37 and 38 of the Shop Crafts Agreement between Transportation Communications International Union - Carmen's Division and the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carman C. B. Shipe (hereinafter "claimant") when the carrier removed and excessively withheld the claimant from service.

2. That, accordingly, the claimant is entitled to be compensated for eight (8) hours each work day from May 7, 1987 to July 11, 1987.

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 basic issue involved in this Docket has been before this and other Divisions of the Board many times. The claim of the Organization involves an allegation of inordinate delay in returning an employee to duty following a medical release by his treating physician. Review of our Awards in similar cases discloses that the Board subscribes to the notion that undue delay on the part of the carrier in review of medical documentation, scheduling of necessary tests and/or examination by its medical staff, warrant compensation for the time the employee lost as a result of delays attributable to carrier inaction. Our Awards, though, have not established a standard on an appropriate time element for measurement of these delays. Instead the particular facts associated with each individual case have been reviewed and generalized tests of reasonableness have been applied to the facts developed.

In applying this reasonableness standard, the Board has recognized that both the employee and the carrier share an obligation to expedite receipt and release of necessary medical documentation and information. The Board has also recognized that special cases require longer periods for review than more ordinary cases. Carriers have a basic obligation to insure that any return of an employee who had been absent because of illness or injury satisfied its medical standards. Importantly, though, in cases where the returning employee has satisfied accepted medical standards, the Board has concluded that delays in effecting a return to duty, within the control of a carrier, are the responsibility of the carrier.

Applying these considerations to this case the Board notes that Claimant suffered a history of back problems, including prior back surgery. On May 6, 1987, he approached his General Foreman complaining of back pain. He was directed to have a special examination by a Carrier Medical Examiner that day, which necessitated a follow-up examination by an orthopedic specialist. The orthopedic examination could not be scheduled until June 2, 1987. The results of this examination were received by Carrier on June 17, 1987, and on July 7, 1987, Claimant was approved to return to duty. Since he was on vacation at that time, he returned to service on July 14, 1987.

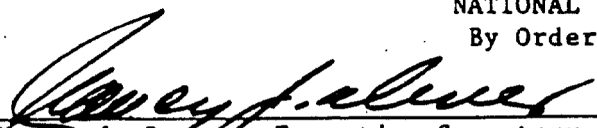
In the circumstances present it was not inappropriate for Carrier to withhold Claimant from duty until it was established that his back condition was within Carrier's medical standards. Accordingly, Claimant is not entitled to compensation for any time lost between the date he was held out of service for medical reasons and the date Carrier was advised of the results of the examination of the orthopedic specialist. Upon receipt of the results of this examination Carrier was obligated to act promptly. Ten work days should have been more than sufficient to act upon the matter. Accordingly, Claimant is entitled to payment for time lost beyond ten work days from the date Carrier received the report of the orthopedic specialist, i.e., commencing Thursday, July 2, 1987.

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 18th day of November 1992.