

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12733
Docket No. 12552
94-2-92-2-77

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division/TCU
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(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

- "1. Coach Cleaner Sheina King was denied her request to return to work on a timely basis and Carrier failed to schedule a physical examination to return her to work; thereby the Chicago and North Western Transportation Company violated Rules 14, 16, 25 and 32 of the Controlling Agreement.
2. Accordingly, Coach Cleaner Sheina King be compensated eight (8) hours pay per day from July 23, 1990 up to August 27, 1990."

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 employee 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 instant Claim alleges Carrier delay in returning Claimant to work after a physician release. The dates are essential to our determination of this case. Claimant, a Coach Cleaner at the Carrier's California Avenue Shops, sustained an on-duty personal injury June 27, 1990. On July 23, 1990, the Medical Department received two letters releasing Claimant to return to work. On July 25, 1990, the Carrier denied Claimant's right to resume her position pending further medical information. The Organization filed this Claim on August 6, 1990 alleging Carrier violation of numerous Agreement Rules and in particular due to the Carrier's excessive delay in scheduling a return-to-work physical exam. The Claimant underwent her return-to-work physical examination on August 21, 1990. Claimant was returned to service on August 27, 1990.

The Organization alleges excessive delay in that the Claimant had been released by her physician to return to work. Accordingly, the Carrier was obligated to schedule an immediate return-to-work physical examination and return her to duty. Instead, the Carrier withheld Claimant until unnecessary additional medical information was supplied and further held her out of service after the information was supplied by her physician. Claimant had been given a release to return to duty on July 23, 1990 and was not returned to work until August 27, 1990. The Organization seeks compensation for all that lost time as it far exceeds any reasonable time to conduct a return-to-work physical. As the Organization states its position:

"There is no question that the claimant ..., received a full release from her doctor to return to work, and that [Claimant] complied with the carrier request to supply medical information. We claim the company took an exorbitant amount of time to return [Claimant] to work...."

The Carrier denied the Claim arguing that its request for information was dictated by the ambiguous language of the medical releases. The required information was requested by the Carrier two days after it reviewed the releases. Claimant informed the Medical Department on August 6, 1990, that the request had been presented to her physician. The Carrier received the requested medical information on August 17, 1990. Claimant was given her return-to-work physical on August 21, 1990 and released to return to work on Friday, August 24, 1990. The Carrier notes that as August 24th was a Friday, the Claimant resumed her position Monday August 27, 1990. The Carrier contends that it violated no Agreement Rule and was both properly diligent and expeditious in its handling of the Claimant.

This Board has reviewed the chronology and evidence in this case. We find that the Claimant did not produce clear medical releases when she presented herself for a return to duty. Although we have carefully reviewed the Claimant's allegations we find them unpersuasive when compared to the facts of record. The Carrier had earlier requested medical information which was not forthcoming (letter of May 17, 1990). The Medical release that Claimant presented on July 23, 1990 was unclear stating "according to syncopal episode, none can predict." The Medical Department's request for clarification was proper given these instant circumstances. The information requested included the physician's diagnosis of the cause, present neurological symptoms, the name of medications prescribed and their effect upon work safety and whether physical activity should be restricted. Requiring complete medical facts that effect the safety of the Carrier, the public and employee are appropriate. The response from Claimant's physician included recommendations of a return-to-work with restrictions. Claimant was not to work around fast moving or dangerous machinery. The Claimant was not to work at "unprotected heights." Most importantly, it was not until August 27, 1990 that the final clarification was obtained from the Claimant's personal physician that she could work without restrictions. The Claimant was returned to work on that day. We find no Rule violated. From these facts, we must conclude that the Carrier did not unduly delay the Claimant's right to return to work as soon as possible.

This record demonstrates that the delay was due to the information requested not reaching the Carrier from the Claimant's physician. The Carrier acted in a reasonable and responsible manner.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.