

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13952
Docket No. 13834
08-2-NRAB-00002-070025
07-2-25

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

(Brotherhood of Railway Company Division of TCIU
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

- “1. That the Delaware and Hudson Railway Company (Division of CP Rail) violated the terms of our current Agreement, in particular Rule 16.1, when they denied Carman Douglas Edwards to return to service in a timely manner.**
- 2. That accordingly, the Delaware and Hudson Railway Company be required to compensate Carman Douglas Edwards in the amount of eight (8) hours for each day the Carrier improperly withheld him from service from October 1, 2005 until November 4, 2005.”**

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. The instant dispute concerns whether or not the Claimant was returned to service in a timely manner after being cleared to return to work after taking a back-to-work physical.

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 instant dispute concerns whether or not the Claimant was returned to service in a timely manner after being cleared to return to work after taking a back-to-work physical.

It is the Organization's position that on October 7, 2005, the Claimant took a Carrier ordered return to work physical at Orthopedic Associates after being off account of an off duty injury. After attending the Carrier physical, Claimant was advised that he had a high pulse rate and was advised to see his personal physician. Claimant complied with the Carrier's directive and saw his doctor who found nothing out of the ordinary. The Claimant was denied his return to work on October 21st and was not allowed to return to work until November 4, 2005. Therefore, the Organization argues that the Carrier owes the Claimant nine days compensation for the period from October 21 through and including November 3, 2005, account of its failure to return him within a reasonable period of time.

It is the Carrier's position that the Claimant was off work with an off duty injury. Upon his being released by his personal physician to return to work, by letter dated October 7, 2005, which was received by the Carrier's Health Services Department on October 12th, the Claimant was required to have a return to work physical and drug and alcohol screen, which he did on October 13, 2005. The results of the physical and drug and alcohol screening were received by the Carrier's Health Services Department on October 20th and reviewed by its Chief Medical Officer on October 21st who took note of the Claimant's high pulse rate and required further documentation from the Claimant's personal physician before he would allow his return to service. October 22 and 23, 2005, was a Saturday and Sunday, and the Carrier's Health Services Department is closed on both days. On Monday, October 24th, the Carrier started making attempts to get in contact with the Claimant to provide the additional information. Voice mails were left at the Claimant's residence on October 24 and 26, 2005, explaining what was required. As soon as the necessary information was provided to the Carrier's Health Service

Department on November 1st, it was reviewed and then the Claimant was approved and advised on November 3, 2005, that he could return to work. Therefore, the Carrier argues it returned the Claimant to service in a timely manner.

The Board has reviewed the record and it should be noted that even though the starting date of the claim indicates it to be October 1, 2005, it is clear that the parties understood that the Organization was actually requesting compensation beginning on October 21st. Therefore, it is reasonable to determine that as far as the Organization is concerned, the Carrier acted appropriately in holding Claimant out of service from October 1 until 21, 2005. On October 21st the Claimant's personal physician provided a statement clearing Claimant for return to work. The on-property correspondence reveals that the Carrier's Health Service Department had a concern regarding the Claimant's pulse rate and that it wanted the Claimant to request his physician to provide his office notes for its additional review. That request was made on October 24, 2005, the first workday following October 21st and was repeated on October 26th. Claimant's physician responded on November 1st and Claimant was subsequently authorized by the Carrier's Chief Medical Officer after his review of the doctor's notes to return to service on November 3, 2005. The request made by the Carrier for further medical information was not unreasonable as a legitimate concern for the Claimant's health had arisen. Any delay in this instance was not attributable to the Carrier and because of that the claim must be denied.

AWARD

Claim denied.

ORDER

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

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of October 2008.