

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14170
Docket No. 14041
16-2-NRAB-00002-150004**

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

**(Brotherhood Railway Carmen-Division of TCU/IAMAW
PARTIES TO DISPUTE: (
(The BNSF Railway Company**

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Santa Fe violated the terms of the February 1, 2006 Agreement, specifically Rules 16 and 17, when they arbitrarily withheld Carman Benjamin Brill from returning to full duty service until November 20, 2013, after the Carrier was provided a release on November 8, 2013 from the Claimant’s personal physician, which was signed and dated November 7, 2013.**
- 2. Additionally, the Carrier is ordered to make the Claimant whole as follows:**
 - 1. The Carrier shall now compensate the claimant, for all time he would have been available to work at the straight time, time plus one-half overtime and double time overtime as provided per the Agreement. Made whole all benefits including vacation time and credit for future vacation, personal leave days and credit for future personal leave days, and all other paid time such as bereavement, jury duty, etc. as provided per the Agreement. Made whole for all health insurance, including dental, eye, etc., for he and all eligible dependents as provided per the Agreement. Made whole all Railroad Retirement benefits including time accrued for retirement, unemployment and sickness, etc. as**

provided through the Railroad Retirement Board and as per the Agreement. Made whole all time that would have been accredited towards his apprenticeship, seniority and time of service at the BNSF Railway and benefits or rights he would be entitled to by the provisions of the Agreement, from November 8, 2013 until November 20, 2013, when he was reinstated to service.

2. The Carrier shall provide and maintain all insurance coverage and at no fee to the claimant, provide all necessary documentation and forms in order for the claimant to draw all sickness, unemployment and insurance benefits entitled to.
3. The Carrier shall compensate the claimant at the rate of straight time pay for eight (8) hours, 15:00 to 23:00 for each of the following dates, November 9, 10, 11, 12, 13, 16, 17, 18 and 19, 2013. This is a total of nine (9) days for seventy two (72) hours. Additionally, the Carrier shall compensate the claimant for eight (8) hours at the rate of time plus one half for November 16, 2013, for the hours of 23:00 to 07:00 (copy of November 16, 2013 overtime call included).
4. The Carrier shall now compensate the claimant for all costs and fees to see his own specialist, as required by the BNSF.”

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 were given due notice of hearing thereon.

At the time of this dispute, the Carrier employed the Claimant, Benjamin Brill, as a Carman in Denver, Colorado. On November 6, 2013, the Claimant was involved in an automobile accident, suffering injuries that required that he be hospitalized. The Carrier therefore placed the Claimant on a medical leave of absence effective November 6, 2013.

On Friday, November 8, 2013, the Claimant evidently was released from the hospital, and released by his treating physician to return to work. The Carrier received a copy of the physician's release on Saturday, November 9, 2013. The Mechanical and Environmental Health (MEH) Department of the Carrier reviewed the physician's release on Monday, November 11, 2013, and determined that it needed further information to assess whether the Claimant was fit to return to Carman duties. On November 13, 2013, the Carrier asked the Claimant to report for a neurological examination, the results of which would assist the MEH Department in assessing his fitness. The Carrier received and reviewed the results of the neurological exam on Tuesday, November 19, 2013, and allowed the Claimant to return to service on Wednesday, November 20, 2013. The Claimant resumed his normal duties for the Carrier on November 20, 2013.

The claim contends that the Carrier unreasonably delayed the Claimant's return to work after the Claimant's physician released him, and therefore asks that the Carrier be ordered to compensate the Claimant for the wages he would have earned on nine workdays beginning November 9, 2013, the day after the physician's release, and ending with November 19, 2013, the day before the Claimant actually resumed working.

The claim contends that, in delaying the Claimant's return, the Carrier violated Rules 16 and 17 of the Agreement. Rule 16 provides that an employee on a leave of absence may return to work before the expiration of the leave upon giving the Carrier "not less than twenty-four (24) hours" prior notice. Thus, Rule 16

requires at least a full day's notice by such an employee, but the Rule does not place a limit on how long beyond twenty-four hours that the Carrier may take to act upon the employee's request.

Rule 17 sets forth a procedure whereby the Organization may contest the Carrier's holding an employee out of service based on the Carrier's medical examination of the employee. Rule 17 allows the Organization to contest such an action by submitting a contrary medical assessment of the employee and, if necessary, getting a tie-breaking third medical opinion. Thus, Rule 17 is not specifically applicable to the instant claim, since the Carrier did not hold the Claimant out of service based on an examination of the Claimant by a Carrier physician. However, Rule 17 implicitly acknowledges that resolving questions about an injured employee's fitness to resume work for the Carrier may take some time. Also, in the instant case, the Carrier afforded the Claimant the opportunity to be examined by a neurologist to better assess his fitness for duty, and promptly returned the Claimant to work based on the evaluation of that specialist.

It is the opinion of this Board that the Carrier did not violate Rule 16 or Rule 17 as asserted in the instant claim. Moreover, the Board concludes that the Carrier acted consistently with prior applicable Board awards.

In a September 8, 2014 letter to the Carrier in the instant claim the Organization noted: "Numerous prior Board Awards have consistently held that the Carrier has five business days to return an employee to work following release by his/her physician(s)." In addition, several awards have recognized that the Carrier has the right to have its own medical officials seek additional information from an employee, or the employee's physician, when an employee is released by the employee's physician to return to work. This is so that the Carrier can be reasonably assured that the employee in fact is fit to resume the difficult and potentially dangerous activities involved in railroad work. *See, e.g.,* NRAB Second Division Award 14071.

In the instant claim, it is the conclusion of the Board that the Carrier did not "dawdle" or take unnecessarily long in responding to the Claimant's request to return to work. The Carrier received the release from the Claimant's physician during a weekend. On Monday, the Carrier's MEH personnel reviewed the release and contacted the Claimant to discuss further information that the Carrier felt was

needed. It took only eight days thereafter for the Carrier to secure a neurological examination of the Claimant to review the results of that exam, and to notify the Claimant that he could return to work. There is nothing in the record to indicate that requiring the neurological exam was a needless delay.

All told, only about ten days elapsed between the earliest date on which the Organization believes that the Claimant could have resumed working and the date when he did return. This is only five days more than the five days that the organization agrees is permissible under Board precedents even when there is no question about an employee's medical release. And it is much less than the time that may be taken under Rule 17 where there is a dispute about an employee's medical fitness.

Therefore, under the circumstances, and consistent with Board precedent as discussed, the Board cannot conclude that the ten day interval was unreasonable so as to violate the Agreement. Accordingly, the instant 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 20th day of December 2016.