

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 14176  
Docket No. 14021  
17-2-NRAB-00002-140058

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

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

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Santa Fe violated the terms of the September 1, 1974 ATSF Agreement, specifically Rules 1, 17, 22 and others, when they withheld and delayed Carman Christopher E. Sanchez's return to the craft from October 27 to November 20, 2011.
2. That accordingly, the Carrier be ordered to compensate the Claimant eighteen (18) days pay at the pro-rata rate of pay.”

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.

On October 26, 2011, the Claimant was relieved from his exempt Mechanical Foreman position, which he had held since January 2007. The Carrier advised the Claimant on October 27, 2011, that prior to returning to work as a Carman, he would

be required to fill out a medical questionnaire required by the Carrier's Medical Department. The Claimant returned the form the next day on October 28, 2011 and after review by the Medical Department it was determined that additional information was required to be submitted. While the record does not indicate when the Claimant was told that the additional information was needed, the record does indicate on November 8, 2011, the information had been provided to the Medical Department and that the Medical Department decided that a physical examination should be scheduled. The Claimant completed the physical examination on November 14, 2011 and was provisionally returned to service on Friday, November 18, 2011 and the Claimant marked up for duty on Monday, November 21, 2011.

The Organization has taken the position that the Claimant had no medical condition which warranted the Carrier's requirement that he take a return to duty physical and to hold him out of service pending the outcome of said examination. The Organization further contends that the Claimant was physically capable and qualified to return to service on October 27, 2011 and to continue working the following day on a Carman's position and that the Claimant is entitled to be paid for the 18 days' pay that he lost.

Contrariwise, the Carrier notes that the Claimant was working an exempt position for over 4 1/2 years and had not been required to perform the type of manual labor required of a Carman and that during this period, the Claimant had taken short term disability leave due to medical issues. The Carrier submits that it has the managerial right and responsibility to insure the safety of its employees to the best of its ability and that inherent in that right is the Carrier's ability to require an employee to demonstrate that he is physically able to perform the functions of his position. Furthermore, the Carrier posits that the Organization has not upheld its burden of proving that the Carrier's actions were unreasonable or that there was any unnecessary delay in returning the Claimant to service.

The Board finds that under the facts present herein, the Carrier was well within its managerial rights to require the Claimant to submit medical information and to undergo a physical examination to demonstrate that he was physically able to perform the duties of a Carman. However, the Board finds that a careful perusal of the time line leads to the conclusion that there were delays in completing this process that were not directly attributable to the Claimant. As noted above, when the Claimant was asked to fill out the medical questionnaire, he did so and submitted it the next day on October 28, 2011. While the record indicates that there was a medical review of these

records and a determination that additional information was needed, there is nothing to show when the Claimant was advised of the need for such additional medical information. The next entry in the time line is on November 8, 2011 when there is a notation that the information had been received and a decision was made to schedule the Claimant for a physical examination. While the physical examination was held on November 14, 2011, there is no explanation for the week delay in scheduling the examination, nor is there an explanation for the four day delay in the Medical Department approving him to return to service following the successful completion of the physical examination.<sup>1</sup>

Based on the information provided during the handling of the case on the property, the Board finds that while the Carrier did have the right to have the Claimant successfully complete a return to duty physical examination prior to returning to the Carman craft, the amount of time to complete this process was unreasonable and that the Claimant should not be expected to bear the financial burden for the delay. The Board recognizes that the Carrier's Medical Department did need some time to review medical records and the results of the physical examination and the Board has taken this fact into consideration in fashioning an appropriate remedy. Under the unique circumstances present herein, the Board rules that the Claimant should be paid 11 working days and denies the balance of the claim.

### AWARD

Claim sustained in accordance with the Findings.

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<sup>1</sup> The Carrier notes that this was a provisional medical release contingent on the Claimant providing some additional medical documentation which the Claimant failed to present and was later removed from service on August 12, 2012 for not providing such information. However, the issue of whether the Claimant provided the additional information in a timely fashion is not before this Board. The Claimant was allowed to return to service based on the November 18, 2011 Medical Department's evaluation of the physical examination.

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division**

**Dated at Chicago, Illinois, this 21st day of February 2017.**