Award No. 5641
Docket No. 5570
2-EJ&E-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Elgin, Joliet and Eastern Railway Company violated the current working agreement when they deprived carman Joseph Gura his right to work January 19, 1966 and January 20, 1966.

2. That the Elgin, Joliet and Eastern Railway Company be ordered to compensate Mr. Joseph Gura 8 hours at the straight-time rate for January 19, 1966 and 8 hours at the straight-time rate for January 20, 1966, account the violation.

EMPLOYES' STATEMENT OF FACTS: The Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the Carrier, maintains a large Car Shop at Joliet, Illinois, where it employs a substantial number of carmen, one of whom is Joseph Gura, hereinafter referred to as the Claimant.

Claimant, who had been off duty due to illness since July 28, 1965, reported for duty on January 18, 1966 with a statement dated January 17, 1966 signed by Dr. Frank H. Hedges reading as follows:

> "Joseph Gura has been under our care and he has now recovered sufficiently so that he may return to his regular work as of Wednesday, January 19, 1966."

In accordance with the Carrier's physical examination policy, Claimant was instructed to report to Silver Cross Hospital on the following day, January 19, 1966 for a "return-to-work" physical examination by a company physician. Claimant reported as instructed and after waiting a considerable period of time was advised that due to an unforeseen emergency the company physician would be unable to examine him and that he should return on January 20th for examination. Claimant reported back to the Carrier on January 19th and was instructed to go home and report back to the hospital on January 20th for his examination. Claimant reported to the hospital on

In recent Award No. 1153, Special Board of Adjustment No. 140, the Carrier was notified by the Organization on October 19 that a Yardman's personal physician had expressed the opinion that the Yardman was physically capable of resuming his duties. As a result of this notification, the Yardman was examined by a Carrier physician on **December 27** — over two months after receipt of the notification and the Yardman was not approved for return to work until **Feberuary 21.** Referee Robert O. Boyd sustained the claims for the period January 11 to February 21, finding that the Chief Surgeon's approval following the December 27 examination should have been communicated in such a manner so as to permit the Yardman's return to duty on or before January 10. A copy of Award No. 1153 is attached as Carrier's Exhibit L.

It is abundantly clear that in the instant case Claimant received his "return to work" physical examination and subsequent approval in a most expeditious manner. It is incomprehensible to the Carrier that the Claimant or the Organization can sincerely contend otherwise when the Claimant was back on the Carrier's payroll 72 hours after he appeared "out of the blue" with a statement from his personal physician. Unfortunately, there is no such thing as an "instant" physical examination nor an "instant" analysis of the tests and X-rays taken as part of the physical examination. It takes time to arrange the examination and it takes time to conduct the examination and analyze the findings. It is the Carrier's opinion that it exerted more than a reasonable effort to expedite the Claimant's return to work, especially in view of the findings in the abovementioned Awards wherein lapses of time varying in length from eight days to almost three months were adjudged by eminent arbitrators to be **not** unreasonable delays from time of reporting for duty until Carrier medical approval was obtained.

The Organization's citation of Rules 26 and 35 as bases for these claims is to say the least highly strained. Rule 26 is the "force reduction" rule and Rule 35 is the "discipline" rule and Claimant was neither involved in a force reduction nor in disciplinary action.

(Exhibits not reproduced.)

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 employe 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 facts in this dispute disclose that Claimant had been off duty with a shoulder injury since July 28, 1965. He obtained a statement from his personal physician dated January 17, 1966, stating that this claimant had "recovered sufficiently" to return to his regular work. Claimant reported for duty on the morning of January 18, 1966, and was directed by Carrier to report to the company doctor, Dr. Zebell, on January 19. Claimant reported for this physical examination, but because of some emergency, Dr. Zebell was unable to see him on that date and Claimant was then directed to report to

Dr. Albers of the same clinic on January 20th. Claimant was examined on January 20th and X-rays were taken. The results of the X-rays were not known until the next day, January 21st, when he was permitted to return to work. Although he did not work the full day of January 21st, he was paid for a full day. Claimant contends that Carrier should have arranged to have him examined on January 18th, and that the delay in his return to work until January 21st was unreasonable. The Organization also contends that Claimant "clocked in" on the mornings of the 18th, 19th and 20th, and that, therefore, he should be paid at least a call for those dates. This Board finds that the right of Carrier to require a physical examination by Carrier's physician of an Employe who has been off work for a substantal length of time because of an injury is well established. (See Awards 9194 (Weston), 10907 (Moore), 14761 by this referee and 15367 (Lynch) — Third Division.)

There is no evidence in the record indicating that the Carrier required this Claimant to "clock in" on the 18th, 19th and 20th of January. The fact that he was available for a physical on January 18th; was not examined until January 20th; and was not returned to work until January 21st, does not constitute an undue delay. This Claimant had been off work with what was evidently a serious injury which required his absence for a period of almost six months. As stated in many prior awards, Carrier not only had the right, it had the obligation and duty to ascertain that this Claimant's physical condition would not constitute a hazard to the public, to the Employes or to this Claimant himself. In view of the overwhelming number of awards on this subject, 3 or 4 days is considered a relatively short time within which to afford this Claimant a physical examination and restore him to work. Therefore, this claim will be denied.

Findings are that the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February, 1969.

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