

Award No. 5974
Docket No. 5814
2-N&W-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement, Carman R. W. Roberts was arbitrarily and unjustly held out of service, from September 1 to September 25, 1967, after having been released as OK for service without any restrictions, by both his personal physician and Carrier's examining physician, thus forcing him to lose sixteen (16) days' compensation, for which Carrier is solely responsible.

2. That accordingly the Carrier be ordered to reimburse Mr. Roberts for all time lost, from September 1 to September 25, 1967, or sixteen (16), eight (8) hour days, at the applicable straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Carman R. W. Roberts, hereinafter referred to as the Claimant, is employed by the Norfolk and Western Railway Company, hereinafter referred to as the Carrier, as carman at Carrier's Shop at Columbus, Ohio and the record shows that he has at no time, either prior to August 29, 1967 or since, been disqualified for service by a Company physician.

On July 6, 1967, Claimant sustained an acute myocardial infarction, but was completely symptom free twelve (12) hours after the infarction and has been since, according to his personal physician's report, Dr. Robert J. Murphy of Columbus, Ohio. On August 25, 1967, Dr. Murphy by letter of same date advised he was permitting Claimant to return to full activity as of the first of September, 1967. This letter was presented to Carrier's General Foreman by Claimant on Friday, August 25, 1967, who requested that Claimant undergo an additional physical examination by Carrier's examining physician, Dr. W. T. Paul, M.D., with which request Claimant faithfully complied by submitting to such additional physical examination on August 29, 1967.

Third Division Award No. 10907 concerns circumstances similar to those in this case, and that Board stated in its opinion:

"Claimant was advised that he would have to submit to a physical examination by Carrier's physician. Claimant was approved by Carrier's medical examiners, and was given the usual 'ability to work' form. Claimant wanted to start work on August 30, 1957. Claimant was withheld from service pending approval of Carrier's medical examiners in Chicago. Such approval was expressed on September 6, 1957.

Claimant contends that Carrier acted arbitrarily and in contravention of the Agreement when it refused to permit Claimant to resume work August 30, 1957, and unnecessarily delayed authorization of Claimant's return to work until September 7, 1957.

Carrier contends that it had the right to a medical examination and that a requirement for the Chief Medical Officer to review the examination was not in violation of the Agreement.

Award 18380 of the First Division and Award 8535 of this Division are in point. We concur with the opinions expressed therein.

We believe that the Carrier not only had the right, but the duty to determine the physical condition of Claimant. A delay of six days is not an abuse of discretion. In Award 8535, there was a delay of 14 days."

The facts contained in this submission conclusively prove that no rule or agreement on this property provides for circumstances contained in this case, that managerial prerogative was not exceeded, and that its responsibility to Mr. Roberts, his fellow workers, and the public dictated Carrier's actions, all of which demand a denial of the claim of the Employees, and Carrier respectfully so requests.

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.

Since the Regional Medical Director, and not the Local Company Examining Physician, is chargeable with the ultimate responsibility for determining the physical fitness of an employe (following a serious illness) to perform the duties of his craft, it is to be expected that this official would be given a reasonable amount of time to check the medical reports and hospital records of claimant's physician.

In the instant circumstances, in making due allowances for (1) the delays in exchange of mail between Roanoke, Virginia and Columbus, Ohio; (2) the

intervening Labor Day Holiday, and (3) that reply from claimant's personal physician was not received until September 20, it cannot be said that the time consumed between September 1 and September 25, 1967 in obtaining and reviewing claimant's medical data, proved that Carrier procrastinated in returning claimant to work.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1970.