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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6403
Docket No. 6231
2-SOU-CM-'72

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

Parties to Dispute:

- (System Federation No. 21, Railway Employees'
- (Department, A. F. of L. - C. I. O.
- ((Carmen)
- (Southern Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement Carman Kenneth P. Boatman, Knoxville, Tennessee, was improperly held out of service beginning July 27, 1970 to November 17, 1970.
2. That accordingly, the Southern Railway Company be ordered to reimburse Carman Kenneth P. Boatman for all time lost beginning July 27, 1970 to November 17, 1970.

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.

Briefly summarized, the relevant dates reveal that claimant was off the job for approximately ten months. When he returned on July 17, he was referred to the Carrier's doctor for examination which took place on July 22. The doctor referred the case to the Carrier's Chief Surgeon for decision. On August 20, claimant was notified that he was not fit for work. A claim was filed by the Organization on September 16. On October 31, claimant was referred for reexamination. He was returned to work on November 17. The claim is made that employee should have been returned to service on July 27 and is therefore to be paid for time lost between July 27 and November 17.

The material medical facts are that claimant was declared unfit because he weighed 300 pounds, more than 100 pounds above his normally allowed weight, and suffered from hypertension. On reexamination, he weighed 271 pounds, his blood pressure had been reduced. He was directed to report for physical examinations within 30 days after his return to work. On April 21, the following year, it was reported that claimant was down to 227 pounds and his blood pressure was normal.

After reading numerous prior Awards of this Division, there is no question that Carrier had the right to require a physical examination before returning the employee to work after an extended absence, and the Organization does not contest this right. It is also well settled that this Board will not substitute its medical opinion for the expertise of qualified doctors. However, we may review the administrative procedures adopted to resolve the question.

Prior Awards agree that a reasonable time for conducting a physical examination after the employee reports for work is approximately 5 days. Bearing in mind that the employee is losing pay each day that he waits for an answer, there should be no delay. If the examining doctor for the Carrier was uncertain, he should have said so right away. Instead, he referred the case to the Chief Surgeon and the employee was not notified until almost one month later that he was unfit for work.

It is true that a Carrier's responsibility to the public safety requires caution in all areas of operation, including the physical well being of its employees. This is stressed in Carrier's dissent to Second Division Award No. 6207, citing United States Supreme Court decisions and quoting Justice Hugo Black as to the function of this Board.

In this case, the medical opinions revolved around the employee's weight and blood pressure. These fluctuated. When there was evidence that the employee had done something about losing weight, he was returned to work. At that time, he had lost 29 pounds and his blood pressure had dropped. The record before us does not disclose when the reexamination took place between October 31 and November 17. We don't know exactly when, between the first examination on July 22 and the second examination in November, the employee succeeded in losing 21 pounds and the blood pressure dropped.

The delay by the Carrier's medical staff leaves a gap in time that we will try to correct. It is within our authority to exercise reasonable judgment. We believe that the employee could have lost 29 pounds, and apparently his blood pressure dropped with the weight loss, been reexamined and returned to work by October 1. This could have been accomplished if he was told promptly after the first examination to lose weight and report for reexamination every 30 days until an acceptable weight level and blood pressure could have been achieved.

Accordingly, the employee should be paid his pro rata rate for work days lost from and including October 1, to the date of his return on November 17.

A W A R D

Claim sustained to the extent stated above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Kilgore
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November, 1972.