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Award No. 6628
Docket No. 6477
2-CP-CM-'74

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of January, 1974.

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6629
Docket No. 6479
2-SCL-CM-'74

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: { System Federation No. 42, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under terms of the current agreement, Carman H. F. Ryals was unjustly held out of service beginning September 13, 1971 and continuing until he was restored to service on October 11, 1971.
2. That accordingly the Seaboard Coast Line Railroad be ordered to compensate Carman H. F. Ryals eight (8) hours each day, forty (40) hours each week, at pro rata rate beginning September 13, 1971 and continuing until he was restored to service on October 11, 1971.

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 claim before us is on behalf of Carman H. F. Ryals for 8 hours pay at pro rata rate beginning September 13, 1971 and continuing until October 11, 1971 when claimant was restored to service. The facts giving rise to this claim are not in dispute. Claimant had been out of service due to a recurring back injury and returned on September 13, 1971 with a letter from Dr. Bickerstaff dated September 10, 1971 releasing claimant for service. However, claimant was advised by Carrier that this release was unacceptable as its Chief Medical Officer desired a more detailed medical report from Dr. Bickerstaff. The report was received by the Chief Medical Officer October 9, 1971 and claimant was approved for service the same date. He returned October 11, 1971. Petitioner contends claimant was unjustly withheld from service during this period.

The issue before this Board for determination is not one of first impression. Second Division Awards 6331, 6278, and 6363, involving the identical parties now before us, have all decided the issue at hand. Therein it was held that the Carrier has the inherent right to require employees to submit themselves for physical examination before returning them to work, but the Carrier has the obligation to render the examination within a reasonable time. And it was determined that five days was a reasonable time.

We see no reason to depart from the reasoning in those Awards and we fully subscribe to it herein. We thus conclude that since Carrier desired that claimant's fitness to return to service be determined by its Chief Medical Officer it was bound to have such determination made within five days of September 13, 1971, the date claimant first returned to service, or by September 18, 1971. Since it failed to do so we will allow the claim for the period commencing September 19, 1971 up to October 11, 1971, the date he returned to work.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of January, 1974.