

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. 10, Railway Employees'
(Department, A.F. of L. - C.I.O.
((Carmen)
(
(Denver & Rio Grande Western Railroad Company

Dispute: Claim of Employees:

That Carman H. S. Pettet was held out of service from May 10, 1971 to July 27, 1971 without just cause. That the Denver & Rio Grande Western Railroad Company compensate Carman H. S. Pettet eight (8) hours a day at pro rata rate or a total of 40 hours per week for all time lost between May 10, 1971 and July 27, 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 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 waived right of appearance at hearing thereon.

The facts leading to the instant claim are not in dispute. On December 29, 1970 Claimant had his knee operated on. He returned to Carrier in March and April 1971 but, after examination by Carrier's Doctor Harmon, he was not released for work. On May 10, 1971 he was examined and released by Dr. Woodruff, one of Carrier's Doctors, but Mr. Sampson, Manager of Carrier's Medical Service Department refused to accept his report and Claimant was not allowed to return to work. Mr. Sampson felt that Dr. Woodruff was not fully apprised of the facts by Claimant when he examined him. Claimant next returned to Carrier on July 13, 1971 after having been given a full release from his physician, Dr. Beck. He was given an examination by Dr. Harmon on July 26, 1971 who found him physically qualified to return to his position as Carman. He returned on July 27, 1971. Claimant is requesting compensation for the period of May 10 to July 27, 1971 alleging that he was

released to return to work by Carrier's physician but Carrier held him out of service without just cause.

It is apparent from the record that Claimant was not given an unconditional release by his personal Doctor to return to his position as Carman until July 13, 1971. Prior to this Dr. Beck had placed restrictions on Claimant's activity which Carrier felt precluded him from performing all the duties of a Carman. Such a conclusion on Carrier's part cannot be deemed unreasonable or arbitrary in light of the fact that even lead Carman perform some bending and squatting which activity Claimant was restricted from performing.

It is no longer open to question that Carrier has the right to require its employees to submit to a physical examination as a condition precedent to returning them to duty. Thus, when Claimant reported for service on July 13, 1971 with a full release from Dr. Beck, Carrier was justified in requiring him to be examined by its Company physician. However, Carrier is obligated to render the examination within a reasonable time and five days has been determined by this Division to be a reasonable time. Therefore Carrier was required to hold the examination of Claimant by July 18, 1971 and any delay beyond this date must be considered unreasonable. The claim will therefore be sustained for the period July 19 to July 27, 1971 when Claimant returned to service. We find no merit to Petitioner's contention that Rule 20 is applicable to the claim herein and we thereby conclude that it is not dispositive of the issue at hand.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of May, 1974.