

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 41, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

Dispute: Claim of Employees:

1. That the Chesapeake and Ohio Railway Company violated the current agreement, particularly Rules 21, 22, and 31, when they unjustly held Electrician K. R. Osborn out of service for an excessive period of time, January 2 through 5, 1973, pending a medical evaluation of his fitness.
2. That, accordingly, the Chesapeake and Ohio Railway Company be ordered to compensate Electrician K. R. Osborn, eight (8) hours pro-rata pay, for each such day he was unjustly withheld from service on January 2, 3, 4, and 5, 1973.

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 Claimant had been absent from duty since November 20, 1972, because of illness. The Claimant visited the Huntington Shops on December 20, 1972, and requested to be returned to work on January 2, 1973. An annual season force reduction was in effect at the Huntington Shops from December 1, 1972 to January 2, 1973; the claimant being scheduled for vacation for December 4 through December 29. The interval between the date of the Claimant's request to return to work and the Carrier's verification of his fitness for service was sixteen calendar days. The Organization contends it was excessive.

The Claimant had been absent from work in blocks of time in 1969 (55 days) and again in 1970 (103 days) due to a heart condition. From July 2, 1970 through November 20, 1972, the Claimant took two sick days.

There is no question that the Carrier has the inherent right to require its employees to submit themselves for physical examination before returning them to duty. However, Carrier does have the obligation to render the examination within a reasonable time. A number of Awards of this Division have held that the examination should be performed within five days. See Awards 6278, 6331, 6363. One Award, No. 6207, has held that the employee should not be required to bear the cost of a medical administrative procedure which resulted in the employee being held out of service on a Saturday, Sunday and Monday because the office of the Carrier's Chief Medical Officer was closed on Saturday and Sunday. All of the above cited awards were adopted by this Division prior to the action of the Carrier in the case at hand.

In one day, January 5, 1973, sixteen days after the Claimant notified the Carrier of his desire and fitness to return to work, the Claimant was examined by Carrier's outside Consultant who telephoned the Carrier's Medical Department who, in turn telephoned the Huntington Shop management, who in turn telephoned Claimant that he was qualified to report for work on his next scheduled day. This was action! This was contrary to the Carrier's previous procedures on the property where letters were sent at each step in the Carrier's process. The Claimant had been diligent throughout. He reported to Carrier some thirteen days prior to the date he wished to return to work. He furnished his "return slip" and his medical-records-release-authorizations immediately after requested. As of December 20th, the Carrier was well aware of the Claimant's medical history, was well aware of the impending Christmas and New Year holidays, should have been aware of the recent Awards of this Division and should have expedited its medical examination procedures accordingly.

A W A R D

Claim sustained.

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 7th day of April, 1975.