

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. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 32(a) of the June 1, 1960 Controlling Agreement when they unjustly held Electrician G. N. Neal out of service on Monday September 24, 1973 and Tuesday, September 25, 1973 at North Little Rock, Arkansas.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician G. N. Neal eight hours (8') at the straight time rate for Monday, September 24, 1973, and Tuesday, September 25, 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 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 Claimant, Electrician G. N. Neal, is employed in the Carrier's Mechanical Department of North Little Rock, Arkansas. He was absent from work and under physician's care since July 19, 1973, undergoing **surgery** for a hernia. On Friday, September 21, 1973, the Claimant furnished the Carrier a release from his personal physician, who also was the Chief Surgeon of the Missouri Pacific Employees Hospital Association, which hospital association does not act for or on behalf of the Carrier, to return to work on September 24, 1973. Also on September 21, 1973 the Claimant was examined by Carrier's district surgeon with his report and the Claimant's medical file then being sent for review by the Carrier's Chief Medical Officer in St. Louis, Missouri. The Carrier's Chief Medical Officer approved the Claimant's return to service in time for him to return to work on Wednesday, September 26, 1976. It is the Carrier's policy that when employees have been off 30 days or more due to illness or injury, return to service must be cleared by Carrier's Chief

Medical Officer. While waiting for the results of the Chief Medical Officer's review, the Claimant was not cleared to work on Monday and Tuesday. The claim before us is for pay for these two days.

The Organization makes many contentions, some of which fail as per our findings of fact as stated above. The Organization's major contentions follow: The Organization contends that the Claimant was unjustly held out of service on Monday, September 24, 1973, and Tuesday, September 25, 1973, not because of medical reasons but because of the lack of administrative procedures, within Carrier's **control, to process Claimant's case on Saturday and Sunday.** The Organization contends that the Carrier's examination and review policy is not contained in the agreement and is therefore not controlling.

We find that the Carrier had the inherent right based on its managerial prerogative to require the Claimant to be examined by a physician of its choice, its district surgeon, and the Carrier had the additional right to review the findings of that examination. This is necessary in order to protect the Carrier itself and the employee involved; as well as other employees and the public. This inherent managerial right has not been restricted by the Agreement of the parties, and we certainly have no power to do so. However, the examination and review process must be conducted within a reasonable period of time as dictated by the individual circumstances of each case. In the case before us, taking into account all of the circumstances contained in the record including the fact that the Chief Medical Officer did not work on Saturday or Sunday, we find that the Carrier's examination and review pertaining to the Claimant was conducted with reasonable dispatch. We thus will deny the claim.

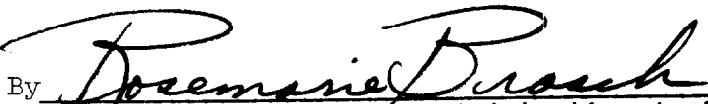
A W A R D

Claim denied.

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 14th day of July, 1976.