Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7102
SECOND DIVISION Docket No. 6768
2-MP-MA-'76

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

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 1 and 32 when they unjustly held Machinist T. G. Williams out of service at North Little Rock, Arkansas on June 11 and 12, 1973.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist T. G. Williams eight (8) hours for June 11 and 12, 1973 at the applicable rate of pay and that he be paid for all fringe benefits which may flow to any other employee in active service.

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 facts giving rise to the instant claim are essentially uncontroverted. On May 8, 1973, claimant entered the Missouri Pacific Employes' Hospital where he underwent an operation. On May 15, 1973 he was discharged from the Hospital. On June 5, Dr. Holt, the claimant's physician, gave him a release to return to service on June 11. When claimant reported for service, however, he was directed to report to Dr. Holmes, Carrier's Medical Officer at Little Rock, at 10:30 A.M. the next day, June 12. Claimant was examined by Dr. Holmes that day and found to be physically qualified to return to service whereupon he returned to service the next day, June 13, 1973.

It is the position of the Organization that claimant was unjustly held out of service on June 11 and 12, 1973. No where in the applicable collective bargaining agreement, they argue, is there a requirement that employees be examined by Carrier's Chief Medical Officer before being allowed to return to service following illness or injury. Moreover, they contend that when Carrier required claimant to be so examined, they unilaterally changed the procedure that had heretofore been in effect. Presumably that procedure has been for the Carrier to accept the medical opinion of physicians at the Missouri Pacific Employees Hospital.

While there admittedly is no contractual requirement that employees be examined by Carrier's Chief Medical Officer prior to being allowed to return to service, it is axiomatic that such a requirement is an inherent right of the Carrier. (cf., for example, Awards 6278, 6039 of the Second Division). Absent a rule to the contrary, Carrier is not obligated to accept the opinion of the employee's personal physician. Yet, it is equally true that where no rule exists stating a specific time limit in which such an examination must be given by Carrier's Medical Officer, it is well established that Carrier has the obligation to render the examination within a reasonable time (cf. Second Division Awards 6629 and 6363).

In the instant claim, Carrier did, in fact, accord claimant a physical examination within a reasonable time. He returned to the property on June 11, arrangements were made for the examination the next morning, June 12, and claimant was allowed to be returned to service on June 13. It is obvious that no undue delay occured in having claimant examined and subsequently, returned to service. He was thus not unjustly held out of service on June 11 and 12, 1973 as alleged by the Organization.

Furthermore, although the Organization strenuously argues that timely notice was not given that the procedure relative to medical examinations was changed, the evidence does not support this charge. In 1964, Carrier cancelled the then existing contract with the Missouri Pacific Employees Hospital and required that henceforth the Company Medical Officer would render the medical opinion respecting an employee's ability to perform service in a competent and safe manner. It is readily apparent that the Organization had actual or constructive notice that the procedure had been changed. They cannot complain nine years later that they were genuinely surprised by the change in procedure.

Based on the foregoing, this Board finds that claimant was not unjustly held out of service on June 11 and 12, 1973. Accordingly, the claim must be denied.

A W A R D

Claim denied.

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Docket No. 6768
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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 23rd day of July, 1976.