

The Second Division consisted of the regular members and in addition Referee C. Robert Roadley 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 agreement, Carman R. T. Porter was unjustly held out of service on August 15, 16, 17, 18, 19, 1974.
2. That accordingly the Carrier be ordered to compensate Carman R. T. Porter for five (5) eight hour days at pro rata rate of his regular assigned position.

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 employees 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.

This claim is the result of the alleged delay on the part of Carrier in allowing claimant to return to work following off duty injury, the delay being the time required for the Carrier's Chief Medical Officer to examine claimant and advise of his fitness for duty. The original claim also covered expenses incurred by claimant in travelling from Portsmouth, Va., his place of employment, to Jacksonville, Fla., the location of the office of the Chief Medical Officer, and return. The expense portion of the claim was settled on the property and is not before the Board. The claim is for five (5) days compensation at the pro rata rate for August 15, 16, 17, 18, and 19, 1974, which is the amount of time that elapsed between claimant being notified to report to Chief Medical Office for examination on August 19 and notification by the Chief Medical Officer to Shop Superintendent's office that claimant could return to work.

The record shows that claimant furnished the Shop Superintendent's office the required release from his personal physician on August 13, 1974, which was read to the Carrier's Medical Department, located in Jacksonville, Fla., by the Shop Superintendent over the telephone the same day. On August

15, 1974, the Chief Medical Officer advised the Shop Superintendent that he wanted to examine the claimant and directed that he report to his office in Richmond on August 19, 1974 for examination. On August 20, 1974, the Medical Department notified the Shop Superintendent that claimant could return to work. Claimant resumed his duties on August 22, 1974, August 20 and 21 being the rest days of claimant's regular position.

Petitioner alleges that the foregoing represents a delay in carrier returning claimant to his position of twelve days and that such delay was arbitrary and placed an undue burden upon claimant. (Page 5 of Employee's Submission to Board)

While it is true that claimant notified his Superintendent, on August 8, 1974, while still on leave of absence, that his doctor was going to release him it was not until August 13, 1974, that claimant presented the required medical report to the carrier. The period between August 8 and 13, was, obviously, chargeable against claimant.

The only question to be answered by the Board, therefore, is whether the period between August 13 and August 20 was an unreasonable amount of time for the carrier to make its determination. The claim is actually for 8 hours pay for August 15, 16, 17, and 18 and for time and one half pay for August 19 since claimant travelled to Richmond and was examined on the 19th which was his scheduled rest day. (Carrier Exhibit "B" 1)

There is in effect on this property an Agreement (Mediation Agreement - Case A-9106), effective February 1, 1973, which deals specifically with the question of physical fitness of this Carrier's employees. Item 2, thereof, states as follows:

"If physical examination is deemed necessary by the Company, it will be promptly arranged for by the Company at Company expense and a determination made within a reasonable period on whether the employee is physically able to resume duty.

"Note: The term 'within a reasonable period' will not be used to delay examination of employees and decision as to their physical fitness to return to work. It contemplates a reasonably prompt examination and decision on the employees' physical fitness to return to work, but each case shall be determined on its own merits.
....."

The Carrier has asserted that nothing in the foregoing language limits the time within which the Carrier may be expected to determine an employee's physical condition except that such determination shall be made "within a reasonable period." This reference to a reasonable period of time is not unique to this Agreement for it is a phraseology appearing in countless

Agreements in the railroad industry and has been the subject of numerous Awards by this Board as to what constitutes a "reasonable period." The Carrier further points to the phrase "each case shall be determined on its own merits" as a recognition that some cases may require longer or shorter periods of time to reach a determination.

There is no question that the Carrier has the right to require its employees to submit themselves for physical examination before returning them to duty, and the Petitioner has not challenged that right in this case. We have examined all of the Awards submitted by the parties in support of their respective positions, each such Award treating in part with the question of what should be considered a reasonable period of time within which an employee should be cleared for service by a carrier's Medical Department. In those cases, with the exception of a few that contained factors of a major departure from the basic issue herein, we found that the vast majority of the Awards subscribed to the principle that five (5) days represented a reasonable period of time within which a medical determination ought to be made by a carrier's examining physician. Nothing in the record before us indicates the presence of unusual circumstances; on the contrary the record shows that claimant was cleared for return to duty the day following his examination. We therefore see no reason to depart from the general principle referred to above, although we would be remiss in not acknowledging the fact that a consideration of the merits of many other cases could, and probably would, make the application of the five day principle totally inapplicable under different circumstances.

In the light of the foregoing it is our conclusion that "a reasonable period" within which the Medical Department could have arranged for the subject examination and made its determination should have been made within five (5) days of August 13, 1974, the date the claimant first returned for service, and August 18, 1974. We will therefore sustain the claim for one (1) eight hour day at the pro rata rate of his regular assignment.

The attention of the parties is directed to the following Awards for a review of the Board's prior considerations on the matter of what constitutes a reasonable period of time:

Second Division Awards 6278, 6331, 6363, 6629, 6997, 6569, 6758.

A W A R D

Claim sustained for payment for one (1) eight hour day at the pro rata rate of claimant's regular assignment.

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 11th day of March, 1977.