

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 91, Railway Employees'
(Department, A. F. of L. - C. I. O
((Carmen)
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Carman W. G. Metzger, Jr., was improperly and in violation of the current agreement withheld from service from June 24, 1976 through 11:30 a.m., August 16, 1976, and
2. accordingly, the Louisville and Nashville Railroad should be ordered to:
 - (a) compensate him for all time lost as a result of his suspension, less 5 days vacation pay for the week of August 9th, or 230½ hours at straight time rate, plus 6% interest per annum on all money due him.

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.

On June 22, 1976, the claimant dropped his trousers, so-called "mooning", in front of a Carrier supervisor. The record reflects the claimant had engaged in this behavior previously and had been warned against any further incidents. On June 23, the claimant answered roll call for someone other than himself. On that, the Carrier officials perplexed at this irrational behavior withheld the claimant from service pending physical and psychiatric examination. An initial appointment was made with the company doctor on June 25 and an appointment was made with a psychiatrist for July 2. The claimant was, however, not returned to service until August 16. It is noted the claimant was paid for vacation August 9 through August 13. Charges were filed on August 13, 1976, but following a conference on August 16, 1976

in which claimant acknowledged his responsibility and signed a statement promising to conduct himself in a rational manner in the future, the charges were dropped.

In this claim the Organization alleges that claimant's rights under the Discipline Rule were violated when he was suspended for examination by doctors without first being given a hearing. We are constrained to reject that argument. In our judgment this case does not present a discipline issue but rather an exercise of Carrier's well established right to withhold from service, pending examination, an employee whose physical or mental condition and ability to work without detriment to himself, fellow employees, Carrier and the public is placed in reasonable doubt. See Awards 2799 (Second) and 11909 (Third). In the facts of this case we find that Carrier had ample basis for reaching such a conclusion in light of claimant's irrational and aberrant behavior.

Many Awards however, while recognizing the above mentioned principle, also hold that the Carrier must exercise the right to examine an employee in a reasonably expeditious manner. These Awards indicate that a "reasonable time" in which to examine an employee and make known the results varies greatly, and must be fitted to the circumstances of each individual case. See Awards 5974, 6278, 6331 and 6753 (Second); see also Third Division Awards 16606, 18234, 18797, 19484, 21065, 21560.

In this case, a total of 48 days, not including time paid for vacation, elapsed for the conduct of the examination. Even allowing for the unique nature of the behavior involved and the fact that two doctors were utilized, we find that a reasonable time for completion of the examinations would have been July 15, 1976. Accordingly we shall sustain the claim for time lost for the period July 16, 1976 to August 16, 1976. The claim for interest is denied.

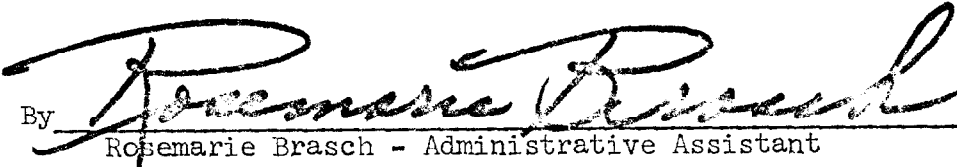
A W A R D

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 7th day of March, 1979.