

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: ( System Federation No. 22, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

- (a) An Agreement exists between St. Louis-San Francisco Railway Company and System Federation No. 22 of the Railway Employees' Department, effective January 1, 1945, Amended July 1, 1952, and Revised April 1, 1971. The Carrier violated Rules 35 (a) and 36, by denying Carman R. W. Ellis of Memphis, Tennessee, his service rights September 25th, 26th, 27th and 28th and October 1st, 2nd, 3rd, 4th, 5th, 8th, 9th, 10th, 11th, 12th, 15th, 16th, 17th, 18th and 19th and October 22nd, 1976, these being the days he was held out of service without benefit of hearing and/or investigation.
- (b) That the Carrier be ordered to pay Carman R. W. Ellis of Memphis, Tennessee, in the amount of twenty (20), eight (8) hour days, at pro rata rate, Car Inspector's rate of pay at the time of the claim, \$7.04 per hour.

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 September 23, 1976, Claimant was on his second rest day. He telephoned his supervisor to obtain permission to be off duty the following day to see a doctor. Permission was granted, but the Claimant was told to bring a doctor's statement with him upon his return to work. Claimant reported for work on September 25, 1976, but without any note from his doctor. He was withheld from service until he produced a doctor's statement and was then permitted to return to work.

The record on the property shows some disagreement concerning what was requested of the Claimant. According to the Carrier, Claimant had advised in the telephone conversation of September 23 that he had sprained his ankle. (The previous year, the Claimant had suffered a fractured right leg and had necessarily lost considerable time from work because of this.) The Carrier's position is that, in view of the medical history, Claimant was simply advised to bring in a note from his doctor that, following an ankle sprain, it was proper for Claimant to resume work.

The Organization denies that Claimant referred to a sprained ankle in the report-off call; that on previous occasions Claimant had requested and obtained permission to be off to see a doctor without being required to bring in a doctor's statement; and that Claimant was being asked to verify his reason for absence of one day, according to the Organization an improper procedure for the Carrier to follow.

The Board finds it of no materiality whether the Claimant understood that he was to bring to his supervisor a verification that he had visited the doctor or a medical statement that he was able to work. The point is that he did neither until some later time when he was, in fact, permitted to return to duty. Further, he did obtain a statement from his doctor dated September 30, 1976, yet he did not offer it to the Carrier until October 22 (following which he was restored to duty).

If the Carrier's direction to provide a physician's statement was considered to be improper, it could easily have been complied with and thereafter made the subject of a dispute. Nor is there evidence that the Carrier withheld the Claimant from service as a disciplinary matter; rather his return awaited compliance with the Carrier's order to provide medical documentation.


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 7th day of March, 1979.