

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No.6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That Carman David L. Carter was unjustly withheld from the service of the Elgin, Joliet & Eastern Railway Company from February 28, 1977 through and including April 27, 1977 in violation of Agreement Rules 103 and 100.
2. That the Elgin, Joliet & Eastern Railway Company, hereinafter referred to as the Carrier, be ordered to pay Carman Carter, hereinafter referred to as Claimant, eight (8) hours pay at the pro rata rate for each of the fifty-nine (59) days during which he was unjustly withheld from service plus vacation, seniority and all other rights and benefits unimpaired.

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.

Claimant asserts that carrier violated Agreement Rules 103 and 100 when it unjustly withheld him from service from February 28, 1977 through April 27, 1977. Previously he had voluntarily removed himself from work on January 13, 1977 because of psychological problems, but presented to the Division General Car Foreman on February 28, 1977, the Verification of Private Medical Form, dated February 14, 1977 indicating his diagnostic profile and a note from his personal physician, dated February 21, 1977 stating that he was now released to work on February 28, 1977. He contends that carrier disregarded his physician's affirmation when it did not immediately re-employ him.

Carrier, on the other hand, argues that the February 21, 1977 communication was medically insufficient to determine accurately claimant's mental health status and requested a comprehensive report. It contends that it was justified by its public interest responsibility and the nature of claimant's illness to seek this information.

It concluded that the personal physician's letter of March 31, 1977 comported with its requirements and claimant was duly referred to the Office of Division General Car Foreman to obtain the needed forms to undergo a medical examination at the Gary Work Dispensary.

In reviewing this case we do not find as contended by claimant that the February 21, 1977 document was dispositive of his medical condition, specifically when he informed the carrier's physician that he was on medication. This admission, by itself, was sufficient justification to warrant follow up medical screening. See, for example, Second Division Award 6233 where we held in pertinent part that, "Carrier has not only the right but the duty to take necessary precautions in insuring that an employee is physically able to perform his job duties without endangering the employee's life as well as the lives of others".

We believe, however, that the March 31, 1977 letter from the personal physician to carrier's chief surgeon detailing claimant's condition and certifying his fitness to return to work fully satisfied carrier's concerns. In particular, we note the following passage, "Mr. Carter was seen on this date, March 31, 1977 and was again evaluated and there was no demonstrable evidence of any depressive symptomatology nor paranoid ideation. It is my definite opinion that he is fully capable of returning to work at his original position with no limitations".

Based upon this professional confirmation, carrier was under a more compelling obligation to return claimant to work sooner. There were no mitigative reasons for waiting until April 28, 1977 to accomplish this purpose and it was not cured by the fact that the chief surgeon was on vacation from April 7, 1977 to April 27, 1977.

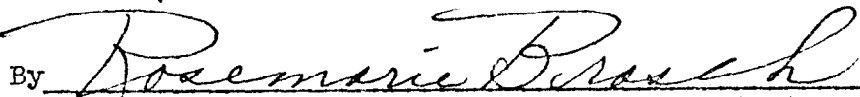
Accordingly, we will order that claimant be paid beginning April 6, 1977 up and until the time he was reinstated on April 27, 1977.

A W A R D

Claim sustained to the extent expressed 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 8th day of August, 1979.