

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
{ and Canada
{ Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Carman, Clayton Allread who was removed from service due to a non job related personal injury on December 29, 1975 was not permitted to return to service on June 27, 1977 after receiving approval of Dr. Dzaid (his personal physician) and Dr. Locksy (company doctor) to return to work status on said date in violation of Rules 18½, 37 and 38 of the controlling agreement.
2. Accordingly, Carman, Clayton Allread is entitled to be compensated in the amount of 990 hours at the Carmen's applicable straight time rate in lieu of said violation.

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.

Following an extensive absence owing to a non-job-related personal injury, Claimant presented himself for work on June 28, 1977, with the approval of his personal physician. Claimant was given such examination on October 21, 1977 and was approved for return to work on December 22, 1977. Claimant returned to work on that date.

Considering the extensive period involved from June 28 to December 22, the Organization filed a claim for time lost from work on behalf of the Claimant. The record shows that such claim was dated January 31, 1978. The Carrier claims that the envelope carrying this claim had a postmark of February 17, 1978 and was received by the Carrier on February 21, 1978.

The Carrier argues that the claim should be dismissed as untimely, under the provisions of Rule 35, which reads in pertinent part as follows:

"All claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

Since the claim had to do with wages allegedly owed over an extended period of time, this type of dispute may be properly classified as a continuing claim; that is, the Organization has the right to file a claim within 60 days of the duration of the "occurrence on which the claim or grievance is based", but any remedy must be limited to a period commencing with 60 days prior to such claim.

The claim was dated January 31, 1978. It is a reasonable conclusion, however, that it was not dispatched until February 17, 1978, the date of the postmark on the envelope, absent any proof to the contrary that it was actually mailed earlier. The Organization cannot be held solely responsible for delay in delivery of the mail thereafter, but the earliest that the claim can be said to be "presented in writing ... to the officer of the carrier" can be February 18. Thus the claim, however meritorious it might be on other grounds, must be limited in its effectiveness to 60 days prior, namely December 20, 1977. The Board may not vary the effect of the clear written terms of the applicable Rule, and thus any remedy must be limited to the period from December 20, 1977 to the date the Claimant returned to full pay status.

As to the merits of the dispute, many previous awards have sustained the right of the Carrier to subject an employee returning to work from illness or injury to a medical examination, but many awards have also established that this must be done within a reasonable period to minimize the loss of pay to the employee. Suffice it to say, the Claimant here was subjected to a totally unwarranted length of time in which the Carrier made its medical determination.

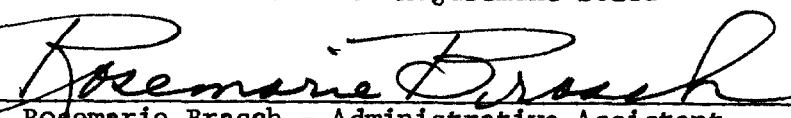
The consideration that the employee, during this period, was also making application for total disability benefits is not relevant to the claim.

A W A R D

Claim sustained to the extent that the Claimant shall be made whole for any loss of earnings commencing December 20, 1977 until his return to pay status.

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 18th day of March, 1981.