

The Second Division consisted of the regular members and in addition Referee Thomas V. Bender when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
{ and Canada  
{ Maine Central Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, the Maine Central Railroad Company violated Rules 17 and 18 thereof when they denied Carman C. F. Lambert of Bangor, Maine, the contractual right to return to employment on December 17, 1979 following a sick leave.
2. That accordingly, the Carrier be ordered to compensate Carman C. F. Lambert for all time lost from December 17, 1979 to January 10, 1980, both dates inclusive, while being withheld from service during those dates.

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.

Carmen C. F. Lambert is employed by the Carrier at Bangor, Maine. During 1979 Carmen Lambert suffered two and possibly three job related injuries. The record shows Carmen Lambert sustained an injury to his back on February 2, 1979, a second injury on July 17, 1979 following this incident the claimant worked until September 28, 1979. On this date, the claimant "booked off" and did not work or communicate with the Carrier until December 17, 1979. At this time the Claimant presented himself for duty with a note from his physician which stated:

"To whom it may concern date 12/13/79  
Subject Clayton Lambert  
Mr. Lambert may return to his regular employment as of  
12/17/79.

/s/ J. F. Adams Jr., M.D."

Based on this note alone, the Carrier refused to allow the claimant to return to work. The claimant was directed to secure a more detailed medical explanation

of his absence. This would then be reviewed by the Carrier's medical officer. This statement was not given to the Carrier until January 8, 1980. After reviewing this report, the claimant was returned to work by the Carrier on January 10, 1980.

The issue presented is who should bear the loss of earnings between the time the Claimant presented himself for duty on December 17, 1979 and the date on which he actually returned to work on January 11, 1980; the Carrier or the claimant?

The record affirmatively shows that:

1. The claimant had sustained two injuries to his back prior to the commencement of his extended leave on September 28, 1979.
2. The Carrier had no knowledge of the claimant's condition during the eighty (80) day absence.
3. Upon the Claimant's return he furnished the Carrier with a terse note from his doctor, quoted supra.
4. At no time prior to December 17, 1979 the Carrier made no request for medical data regarding the Claimant's condition.
5. At no time prior to the Claimant's appearance on December 17, 1979 did the Carrier advise the Claimant that it wanted him to be examined by a specialist.

Certainly, given the Claimant's experience, the Carrier would have been well within its rights to request medical data or an examination. But, the fact is, that no such request was made, the Carrier chose to wait to make any request until the Claimant presented himself for duty. The Carrier can certainly elect this *lassiez faire* approach but it does so at its peril.

The Carrier submits three Public Law Board Awards as support of its action. These awards do not sustain the point pressed by the Carrier. In Award No. 13 of Public Law Board No. 1668 this same Carrier requested medical data from the Claimant in that case prior to his return to work. The Carrier's position relative to the employe's obligation to supply medical data prior to his return to work was clearly and forthrightly stated. Moreover, in Award 13 the Claimant appeared for duty using a cane and limping. The Claimant in the instant case exhibited no such outward manifestations of physical weakness.

Award No. 14 of Public Law Board No. 1668 reads very much like Award 13, supra and therefore is of little value in deciding the instant case.

Award 15 of Public Law Board No. 1668 closely parallels Awards 13 and 14. Again in Award 15 the Claimant appeared for duty on crutches. Again the Carrier held him out of service until medical data could be reviewed.

The Claimant in the instant case presented himself for duty with a doctor's

note releasing him for duty. No one can fault the Carrier for demanding more. But in this case, no effort was made to advise the Claimant of this obligation until the very day of his return. The Carrier should have advised the Claimant before he came back ready to start work.

We have no disagreement with the Carrier's position regarding the importance of safety and its obligation to insure that its employes are at the top of their form. In this case however, it should have advised the Claimant in advance of its demand for additional medical data.

Although the grievance will be sustained, the award should not be construed as in any way limiting the Carrier's right, in legitimate circumstances to demand additional medical certification or examination. Such requests should be made in advance to allow an employe to comply without needless loss of earnings.

The Carrier shall make the Claimant whole for all lost time from December 17, 1979 through and including January 10, 1980.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1982.

DISSENT OF CARRIER MEMBERS  
TO  
AWARD 9143, DOCKET 9214  
(Referee Bender)

In early Third Division Award 4516 (Carter), the Board stated:

"We must point out, however, that an award cited as precedent is no better than the reasoning contained within it...."

In this dispute the Majority has stated:

1. "...claimant worked until September 28, 1979. On this date, the claimant 'booked off' and did not work or communicated with the Carrier until December 17, 1979. (Emphasis added)
2. An explanation for Claimant's 3 month absence "was not given to the Carrier until January 8, 1980."
3. "2. The Carrier had no knowledge of claimant's condition during the eighty (80) day absence." (Emphasis added).
4. Carrier was "well within its rights to request medical data or an examination."
5. "No one can fault the Carrier for demanding more (information). But...no effort was made to advise the Claimant of this obligation until the very day of his return."

Given Items No. 1-4 above, it is sheer self-indulgence for the Majority to accuse the Carrier of deficiency in this matter. The period claimed, December 17 - January 10, was the result of Claimant's own procrastination.

The Awards of Public Law Board 1668 which the Majority finds deficient, dealt with an on-duty injury (Award 13); Notice to the Carrier prior to attempting to return to duty (Award 14); and in Award No. 15 the Board noted:

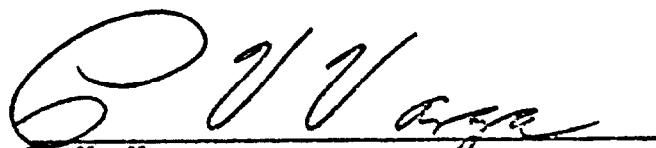
"The Carrier acted in good faith and would have been justified under the circumstances to completely disregard the doctor's report and require the claimant to wait until they had a report from his physician which was worthy of some consideration."


However, in each of these cases, Carrier's need to know the circumstances of the injury prior to returning the individual was manifest and such was the responsibility of the individual.

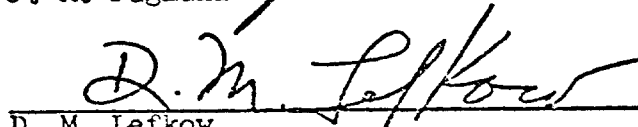
To place a higher burden on the Carrier and to absolve the Claimant, an employee with some 32 years of service, of any responsibility for the delay is not only foolish, but finds no support in this record nor in the contract that the Majority had before it.

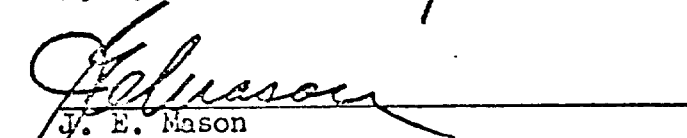
The Award is self-contradictory and cannot be accorded any reasoned support.

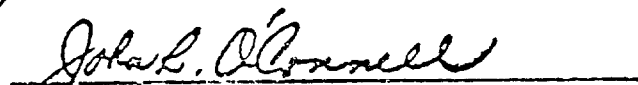
We dissent.

  
P. V. Varga

  
J. M. Fagnani

  
D. M. Lefkowitz

  
J. E. Mason

  
J. R. O'Connell