

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

(International Brotherhood of Firemen & Oilers
Parties to Dispute: (
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. M. C. Klatt, laborer, Alliance, Nebraska, was denied an opportunity to perform service on his regular work day, April 9, 1979.
2. That, accordingly, the Burlington Northern, Inc. be ordered to compensate Mr. M. C. Klatt for eight hours pay at the pro rata rate on the previously mentioned date.

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.

The claim has the following background. Claimant reported off on April 8, 1979, due to illness. The Carrier claims that at that time the Claimant was advised to obtain a doctor's excuse before returning to work. The Claimant returned to work without a doctor's excuse on April 9. The Claimant was denied the right to work his assignment on this date and was sent home and told that he could not return to work without a doctor's excuse. The Claimant did not report for work on April 10 and on April 11 he returned to work with a note from a doctor dated April 11 which read as follows: "This pt (patient) indicates that he was ill on 4-9-79 and is now able to return to work." The claim was progressed in the usual manner and there are no issues relating to the proper handling of the claim.

The Organization argues that there is nothing in the Agreement which allows the Carrier to require an employee to furnish a medical release in order to return to work after a one or two day illness. The Organization asserts that the Claimant fully complied with the contract as it relates to absences. They note that there is no dispute that the Claimant obtained permission to absent himself on April 8, 1979, and in that respect fully complied with the provision of Rule 15(f) which states the following:

"An employee unavoidably detained from work will not be discriminated against. Unless prior notice of expected absence has been given, notice to foreman must be given as quickly as possible, and failure to do so, or habitual absence from work without good cause will be considered cause for investigation and discipline."

Secondly, the Organization argues that the Carrier violated Rule 28 (Investigations) because the Claimant was withheld from service April 9, 1979, as a matter of discipline. They believe that the Carrier denied the Claimant his right to work April 9 as punishment for the Claimant absenting himself on April 8, 1979. Rule 28 is specific that an employee will not be disciplined or dismissed without a fair and impartial investigation. Since the Carrier held no investigation to determine the facts in this matter, the Carrier violated Rule 28. They believe that if the Carrier doubted the reason for the Claimant's absence they could have held an investigation to develop the facts. In addition, they direct attention to Second Division Awards 2707 and 6002 which they believe support their position.

The Carrier argues that the Claimant was not unjustly or arbitrarily denied his opportunity to perform service on his regular work day April 9, 1979. On the contrary, they assert he was sent home because the Foreman in charge did not feel that the Claimant was sufficiently recovered from his illness on the 8th to work safely without causing possible injury to himself or other employees. The Carrier contends that when the Claimant laid off on the 8th, he told the Foreman he was dizzy and weak. The Foreman, according to the Carrier, was aware of the Claimant's excessive absences, and thought that there might be some physical condition responsible and advised the Claimant to see a doctor and obtain a release verifying his fitness for service before returning to duty. They argue that the Foreman's judgment that the Claimant was not fit for service on April 9 was subsequently vindicated not only by the Claimant's failure to report for service the next day, April 10, but by the doctor's statement. In reading the doctor's statement, they emphasize the words "the patient indicates that he was ill on 4-9-79", the day in question, and they also emphasized the portion of the statement which stated the Claimant "is now able to return to work". Inasmuch as the Claimant was sick on the day in question, by the clear wording of his doctor's excuse, they believe the Claimant was properly denied permission to perform service for the Carrier.

This Division and others have stated previously that absent a contractual restriction the Carrier has the right to withhold employees from service when there is reason to believe that they are physically incapable of performing the duties of their position in a proper and safe manner. For instance, it is not uncommon for Carriers to require doctor's releases and/or physical examinations of employees before returning to work after injury or extended illnesses. In this respect, the Organization seems to emphasize the fact that such a request in this case came after a minor illness of only one or two days duration. They believe that such a situation is disciplinary harassment.

The Board believes the length of the illness involved is related but not central to the critical issue in cases where the Carrier has exercised the right to withhold the Claimant from service due to a belief that he cannot properly and safely perform his position. The critical issue is whether there is reasonable justification for the Carrier's action. We agree with the Organization to the extent that situations

that involve withholding an employee pending a doctor's excuse after only a one or two-day illness has a potential for disciplinary overtones. Under the circumstances of a one or two-day illness, it is obviously more difficult for the Carrier to justify requiring a doctor's excuse than it would be for an employee who had been off due to injury or extended illness. However, the length of the illness involved doesn't distract from the fact that the central issue is whether there is reasonable justification, absent disciplinary intent, for the Carrier's actions. Our analysis must focus on this question.

In reviewing the evidence, it is the conclusion of the Board that there is no evidence of disciplinary intent and on the other hand there is more than adequate justification to support the Carrier's decision. The Carrier cannot be required to allow employees to work where there is reason to believe that the physical condition of the Claimant would prevent them from working safely. In this case, there is convincing evidence to believe that the foreman's judgment that the Claimant was unable to work on April 9 was correct. The best evidence of this is the doctor's excuse that stated in clear and unambiguous language that the Claimant, by his own indication, was "ill on 4-9-79", the date in question. The Claimant's indication and the doctor's certification that he was ill on the date in question coupled with the Foreman's observation that the Claimant did not appear well, and the Claimant's report of the 8th that he was "dizzy and weak" are enough to convince the Board that he should not have been allowed to work. The railroad shop environment involves moving equipment etc. and is not a place where an employee in a "dizzy and weak" condition should be.

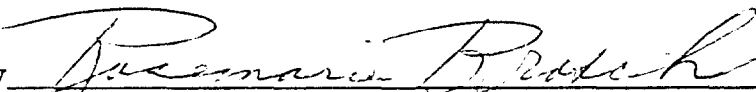
In summary, because there is convincing evidence that the Claimant was ill on the day in question, the Board cannot conclude that the Carrier violated the Agreement when it denied the Claimant the right to work on April 9, 1979.

A W A R D

Claim denied.

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 4th day of August, 1982.