

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That the Louisville and Nashville Railroad Company violated Article V of the May 20, 1955 Agreement when General Foreman Equipment C. S. Carter failed to give reasons for disallowing the claim submitted under date of May 12, 1980.
2. That the Louisville and Nashville Railroad Company withheld Corbin, Kentucky Carman C. L. McHargue from his regular assigned position 7:00 AM, through 3:00 PM, (First Shift) from 10:35 AM, Thursday, March 14, 1980, until he was allowed to return to work at 7:00 AM, Saturday, May 18, 1980.
3. Accordingly, it is requested that the Louisville and Nashville Railroad Company, be ordered to compensate Carman C. L. McHargue for all time lost as a result of the action or three hundred and seventy-two (372) hours and twenty-five (25) minutes.

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 employes 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.

This dispute came about after the Claimant underwent coronary artery by-pass surgery on November 1, 1979. The Organization asserts a contractual violation on the contention that the Carrier failed to give reasons for disallowing a claim submitted on May 12, 1980. Moreover, it argues that the Carrier improperly withheld the Claimant from service.

The significant events leading to this claim began when the Claimant's personal surgeon informed him on March 3, 1980, that he could return to work. In view of this conclusion, the Carrier had the Claimant examined by its District Surgeon on March 4, 1980. Following this examination, the Claimant reported to the Carrier for work on March 6, 1980, verbally stating to a Carrier official that he had been approved to return to work by the Carrier's medical authority. The Carrier official accepted the Claimant's statement, and he was permitted to begin work that day.

It followed that on March 14, 1980, the actual results of the March 4 examination were received by the Carrier. In sum, the Physician recommended against any active work because of Claimant's hypertension. The Claimant was then relieved from duty at 10:35 a.m. that same date. He was subsequently notified in writing on April 21, 1980, of his medical disqualification.

In the interim, on April 2, 1980, the Organization furnished the Carrier with statements of three Doctors, who basically concluded that the Claimant could return to work. At that time, the Organization also requested the Carrier to obtain another medical examination by a neutral Doctor. On April 17, 1980, the parties met, and the Carrier advised the Organization of its policy of withholding employees from service for a minimum of six months following coronary by-pass surgery.

On May 12, the previously mentioned claim was submitted for pay for all time lost, from the time the Claimant was relieved from duty on March 14, 1980 until he was restored to active service. Subsequently, the Claimant was again examined by the Carrier's District Surgeon on May 16, 1980. He was determined to be qualified and returned to work on May 17, 1980.

With respect to the procedural argument, the Organization contends, in a letter to the Carrier dated August 5, 1980, that it did not receive a declination to its claim of May 12, 1980. Therefore, it asserts a clear violation of the 60-day notification requirement. While the Organization's procedural arguments concerning the nonreceipt of the denial letter are understood, we find the weight of the record to support the Carrier's contentions that it did send the letter of June 24, 1980 denying the claim. Accordingly, that part of the claim is denied.

Concerning the claim for time lost, certainly, the Carrier was within its discretion when it relieved the Claimant from duty on March 14, on the basis of its District Surgeon's recommendation. However, while we acknowledge the long-established right of the Carrier to make medical judgments, the record nonetheless shows that it had in hand, on April 2, 1980, medical data from three Doctors that ran counter to the earlier medical judgment with respect to the Claimant's ability to return to a duty status. Consequently, more reasonable progression of the claim was clearly in order. Moreover, although it is not our role to question the six-month period of recovery before return to duty policy of the Carrier, we note certain inconsistencies here, which impact this Award. Specifically, Carrier's officials allowed the Claimant to return to work on March 3, 1980. This action, when coupled with other relevant events of record, leads to a reasonable finding that the policy was either not well-known at the time or was discretionary. Thus, it is not controlling under the facts and circumstances of this dispute.

Accordingly, we find that the Claimant was withheld from service for reasons not attributed to events under his control. Thus, under the peculiar circumstances herein, in that the Claimant was held out of service an unreasonable period of time, a constructed period, from April 17, 1980 to May 17, 1980, is established for the Claimant, for which he is to be paid at his regular rate of pay for the number of days he normally would have worked during that period.

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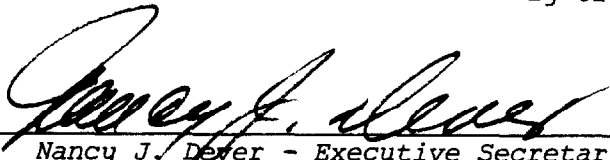
Award No. 10362
Docket No. 9785
2-L&N-CM-'85

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of April 1985.