

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
( Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Carrier violated Rule 28 (a) of the controlling Agreement when it improperly withheld Mechanic A. J. Rankin (hereinafter referred to as Claimant) from service from March 22, 1983, through September 26, 1983, for alleged medical reasons.
2. That accordingly, the Carrier be ordered to compensate Claimant for all wages loss (sic) from March 22, 1983, through September 26, 1983.

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.

The Claimant entered the service of the Carrier on March 25, 1974. On September 3, 1982 he was furloughed in reduction of force and recalled to service on January 10, 1983. On February 12, 1983 he was again furloughed and recalled again on March 22, 1983.

When recalled on March 22, he was scheduled for a return-to-duty physical examination on March 24 by Doctor W. M. Baker. During the examination the Claimant indicated an extensive medical history of arthritis, frequent and repeated problems with various stiff joints and extremities, numbness and weakness in standing, walking and lifting. He stated to the examining physician that he takes a pain killer intermittently for pain and stiffness. The Claimant acknowledged all of his ailments with his signature on March 24. On March 25, he received a back x-ray for comparison with a previous study of an earlier injury. He was evaluated by the examining physician on March 29. The Claimant had an old gun shot wound in his left foot and a subsequent injury to that foot. He was x-rayed on April 7 to check the condition of that foot.

On April 15 Doctor Baker made his full report to the Carrier's Chief Medical Officer and recommended that the Claimant be restricted to assignments that required minimum physical exertion. On April 25 the Chief Medical Officer so advised the Claimant's Supervisor. On May 4 the latter informed the Claimant of those restrictions and stated that there were no positions available that would fit the confines of those restrictions. The Claimant was then placed on medical leave.

On May 2 the Claimant had sought advice of his own Doctor who gave an opinion on that date that the Claimant should be restored to unrestricted duty status. That Doctor was then asked by the Chief Medical Officer to review the report by Doctor Baker. His response on May 23 was, as before, "no restrictions."

To be certain that the Claimant was not placed on a job that he could not safely and efficiently perform, the Chief Medical Officer arranged on June 8 for the Claimant to be examined by an Orthopedist. The report of that examination dated July 8 was that there probably would be some limitation as far as prolonged walking was concerned and Claimant probably was limited from being on his feet more than a few hours, but could probably spend six hours on his feet total during a working day with no definite reason to restrict him from other activities in the job description. The Claimant was so notified on August 2 but at the same time was informed that a position with those restrictions was not available. He was continued on medical leave.

The matter was further reviewed by the Chief Medical Officer on August 31 and on September 12 the Claimant was notified that he could return to duty on a thirty-to-sixty day trial basis with a minimum of restrictions. Why the Claimant did not report for duty until September 26 is not disclosed in the record.

It is well known and equally recognized that the Carrier has a strongly mandated duty to the traveling and shipping public to insure that its employees are physically and mentally capable of safely and efficiently able to discharge their respective duties and responsibilities. When medical evaluation of any of those employees is evident, the examinations should be performed and decisions as to the results announced to the affected employee and his supervisors within reasonable time frames. That was not the case here.

The Carrier contended that the claim as noticed to the Board deals only with violation of Rule 28(a) and no compensation for wage loss can be considered under the provisions of Circular No. 1 or, specifically, that under the caption "Statement of Claim" the Organization did not clearly state the particular question on which an award is desired.

In opposition, the Organization Representative argued that the whole Agreement must be considered and in that light, the time limit on claims provisions of Rule 28(b) apply.

Essentially, the presentation and appeal on the property was:

"Claim due to violation of Rule 28(a)...claimant has been unjustly treated and has suffered wage loss of compensation that is contractually his from date claimant was requested to return to service..."

Throughout the appeals procedure on the property the dispute was presented and addressed in substantially the same manner and in accord with the requirements of the time limit on claims portion of Rule 28, being met without comment and with compliance by both parties. The dispute presented to this Board as set forth in the caption here "Dispute: Claim of Employees" is not significantly different from that handled on the property.

We find that the claim for compensation is properly before us. We find that the claim for violation of Rule 28(a) is properly before us. Both are part and parcel of the claim as presented and appealed on the property and as noticed to this Division.

At the highest level on the property, the Carrier offered a compromise of two months of pay but the offer was rejected. However, we hasten to recognize that the offer and rejection at that level is not binding upon the parties. However, it gives us an indication that the time intervals were considered to be exceptionally long.

In view of the Claimant's history of physical problems, it appears that more than a routine examination, evaluation and report was necessary. But we are not here passing judgment in that regard nor to the extent of his physical condition. The physicians have done that.

Instead we are dealing with the time intervals between the evaluations and notices to the Claimant and his Supervisor. We believe them to be excessively long subsequent to April 25 but, in particular, after May 2.

As previously noted the examination on March 24 was followed by evaluations and examinations on March 25, March 29 and April 7 with Doctor Baker making his report to the Chief Medical Officer on April 15, and the latter rendering his directive on April 25. Upon receiving the report from the Claimant's Doctor dated May 2, the Chief Medical Officer should have promptly taken steps to move this matter to a conclusion pursuant to his request for a third opinion.

The Board finds that the Claimant lost employment opportunity with the Carrier during the periods of examination and reevaluation to the equivalent of 95 work days as follows: Deducting the work days between March 25 to April 15, both dates inclusive, and then work days thereafter to allow for the Chief Medical Officer's review, evaluation and decision, and deducting the four work days between April 25 and May 2, there were 95 work days Monday through Friday, May 3 through September 9, but not beyond.

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Award No. 10623  
Docket No. 10769  
2-SP-MA-'85

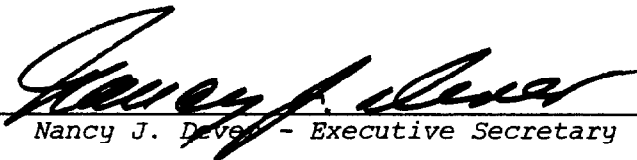
Claim sustained for payment of 95 work days at the pro rata rate and nothing else. If vacation days were paid for during this period, they will be deducted from the 95 days. The pro rata rate will be that in effect during the 95 day period.

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 23rd day of October, 1985