

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

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Electrician M. E. Andrews was unjustly removed and withheld from the service of the Burlington Northern Railroad Company beginning at 9:00 A.M., on September 6, 1983 and continuing through September 11, 1983.

2. That accordingly, the Burlington Northern Railroad Company be directed by this Board to compensate Electrician M. E. Andrews for any and all wages and/or benefits, rights or privileges lost by her as the result of being unjustly removed and withheld from service between 9:00 A.M., September 6, 1983 and continuing through September 11, 1983.

As cited in the claim (Employee Exhibit A) the monetary amount requested consists of \$476.28 which amounts to what Electrician Andrews would have earned during the claim period less her paid sick benefits and the two hours pay earned by her for September 6, 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant, an Electrician at Carrier's West Burlington, Iowa diesel repair facility, was absent from work due to illness beginning August 11, 1983 through September 5, 1983. Upon her return to work on September 6, 1983, Claimant presented a note from her treating physician stating that she had been hospitalized and under his care since August 11, 1983. The note authorized Claimant's return to work on September 5, 1983.

As September 5, 1983 was a holiday, Claimant reported to work at 7:00 A.M. on September 6. Two hours into her shift, she was called to the Shop Superintendent's office where she was apparently questioned about her illness. She informed Carrier that her illness was diagnosed as a Dysthymic Disorder, but was unable to state the medication she had been prescribed.

At 9:00 A.M., allegedly on the advice of Carrier's Medical Department in St. Paul, Minnesota, Claimant was handed the following notice from the Shop Superintendent:

"This is to advise you that effective 9:00 A.M., September 6, 1983 you are being withheld from service of the Burlington Northern Railroad because of your physical condition (Dysihymic [sic] Disorder).

You should have your personal physician (M.D.) furnish a report to Surgeons Inc. regarding your condition, treatment required and capabilities of your employment as an Electrician. When you have this information available we will arrange for an appointment for you to take a return to work examination."

The record shows that on September 12, 1983, Claimant provided the Carrier with a second letter from her physician dated September 9, 1983. This letter states, in pertinent part:

"Mary Andrews was seen by me on an inpatient basis from August 14, 1983, to August 20, 1983 in Burlington Medical Center. She was discharged on August 20, 1983, with a diagnosis of Dysthymic Disorder. At the time she was taking Tofranil for treatment of depression, anxiety and some somatic complaints. This medication was later discontinued and she is presently taking Ludiomil 25 mg, 1 tablet at night.

Mary has been seen on two occasions since her discharge, August 29, 1983 and September 6, 1983. Her depression seems to be under control and she is responding fair to the medication. She is able to return to work at this time."

Upon receipt of this letter, the Shop Superintendent arranged for a medical examination of Claimant by a Company physician on September 12, 1983, and she was advised to return to work the next day.

The Organization, during the handling of this Claim on the property, acknowledged that the Carrier has a right to withhold from service an employee who, in the Carrier's opinion, is not physically capable of performing his or her duties. The Organization contends, however, that once the Claimant had been permitted to return to work on the morning of September 6, she could not be withheld from service due to her physical condition without an examination by a Carrier physician. In support of this contention the Organization cited Appendix "I" of the Controlling Agreement. Indeed, the Organization posits that Claimant followed the usual and customary practice in presenting a physician's return-to-work Certificate. The Organization further stated that the provisions of Rule 1(a), (b) and Rule 13(d) of the applicable Agreement support the instant Claim.

The Carrier insists Claimant was properly removed from service in order to insure the safety of Claimant and its remaining employees. It stressed that despite her brief return to service on September 6, Claimant's status as an employee returning from an extended absence due to illness remained unaltered. Carrier reasons, therefore, that Claimant was subject to its right, acknowledged by the Organization, to require a physical examination by its physician of an employee who has been off for a substantial length of time due to a medical condition. In order for that examination to be effective, Carrier stated it was necessary to have information from Claimant's treating physician as to her condition, treatment, medication and prognosis.

As a preliminary matter, the Board finds that Rule 1(a), (b) and Rule 13 defining a day's work, the work week and bulletined positions or vacancies have no application to this case. Further, the Board finds that Appendix "I" does not compel the result sought by the Organization. Appendix "I" provides a procedure to resolve conflicting medical opinion over an employee's fitness for service in regular employment when "an employee is withheld from service because of his physical condition as a result of examination by the Carrier's physician." Claimant was not, however, removed from service based upon a physical examination by a Carrier physician. Nor does the Organization contend that any time a serious question arises as to the medical condition of an employee in service the Carrier must first conduct a physical examination prior to withholding the employee from service. Appendix "I" simply does not state, as the Organization would suggest, that Claimant could only be removed from service on the basis of her physical condition after medical examination. Rather, Appendix "I" provides a method for resolving conflicting medical opinions after an employee is examined by a Carrier physician and removed from service.

Indeed, the Board finds that Claimant was in service when she was withheld, albeit for only a two hour period of time. The Board further finds that Carrier, based upon the duration of Claimant's illness, the general language of the return-to-work Certificate and the fact Claimant was unable to identify the prescription medication she was taking at that time constituted a sufficient basis to withhold her from service.

The issue remains, however, as to whether the delay in Claimant's examination by Carrier's physician was excessive, and to what extent that delay was properly attributable to Claimant and/or her treating physician. The Board agrees with Carrier that the most accurate information about Claimant's condition, treatment, medication and prognosis at the time Claimant was withheld from service resided with Claimant's own physician. Claimant's return-to-work Certificate provided wholly inadequate information on these issues.

Carrier promptly notified Claimant on September 6, at the same time she was withheld from service, to have her treating physician provide Carrier with this information in order that a medical examination by the Carrier's physician could be scheduled. Claimant's physician communicated the necessary information in his September 9, 1983, letter addressed to the Shop Superintendent. Carrier's assertion that it was notified on September 12 by Claimant that she possessed the requested information is uncontested. Carrier proceeded to have Claimant examined that same day and she was authorized to return to work on September 13, 1983.

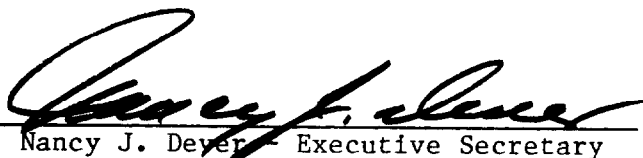
The Board concludes, therefore, that the delay in Claimant's reinstatement to service was primarily attributable to the Claimant and her treating physician. This delay, when viewed in its entirety, was neither unreasonable nor excessive. Carrier had a duty and obligation to determine that Claimant's physical condition did not constitute a danger either to herself, other employees or Carrier's property. The Board cannot conclude, based upon these facts and circumstances, that the delay in her reinstatement is properly attributable to the Carrier since it acted promptly upon receipt of Claimant's physician's report.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1986.