

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Grand Trunk Western Railroad Company

Dispute: Claim of Employees:

1. That the Grand Trunk Western Railroad Company violated the controlling agreement when Carman R. Waldren was unjustly held out of service from January 23, 1984 to February 7, 1984 without just cause.

2. That the Grand Trunk Western Railroad Company be ordered to compensate Carman Waldren eight (8) hours at the pro rata rate for all time lost from January 23, 1984 to February 7, 1984, and that he be compensated for all overtime pay he may have been eligible for, and made whole for qualifying purposes in regards to vacation time.

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 employees 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 was employed at Blue Island, Illinois. The significant events leading to this Claim arose on December 9, 1983. On that date, the Claimant sustained a heart attack and he was placed on sick leave. On January 16, 1984, the Claimant presented a note from his physician to a Carrier Foreman which stated that he could return to work "without limitation." The note was forwarded (on a date unknown) to the Carrier's Chief Medical Officer who was located in Detroit, Michigan. That Officer, on January 26, 1984, wrote to the Claimant's physician and provided to him the physical requirements of the Claimant's position as an Outside Carman. The Medical Officer asked that he apply the physical requirements of the Claimant's position to the Claimant's physical condition. By letter dated January 30, 1984, the Claimant's physician responded to the Carrier's Chief Medical Officer. He concluded that the Claimant was physically fit to return to work as an outside Carman.

The record then indicates that the Claimant's Car Foreman was told on February 6, 1984, at about 1:00 P.M. that the Claimant could return to work. He was called on that date and did return to work on the following day, February 7, 1984.

Numerous Awards of this Division have held that the Carrier has the right to require an examination by its Medical personnel in order to determine physical fitness. There are also Awards which have held that the Carrier and the Employee bear the burden of expediting the necessary information to the Carrier's Medical Department. Lastly, there are Awards that have held that certain periods of time (such as "five days" or, for example, "one week") for the Carrier to act on matters such as this were reasonable.

While we do not argue with those Awards that rely upon a time constraint for the Carrier's actions, we follow the general notion that each individual circumstance must be judged on its own merits as to what is reasonable. Accordingly, the question before the Board is whether the Carrier unduly delayed the Claimant's return to work. The Organization asserts that the Claimant could have returned to work on or about January 23, 1984, and requests backpay from that date to February 7, 1984.

Clearly, the Organization's assertion that the Claimant should have been returned to work "on or about January 23, 1984" is not reasonable, given the serious nature of his incapacitation. However, absent further explanation by the Carrier on the property, we agree that there was some undue delay after the January 23 date. The Board, in this regard, notes that, after the Organization made contact with the Carrier on February 4, 1984, with respect to the Claimant's return to duty, the Claimant was shortly returned to work.

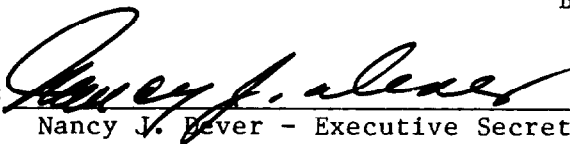
Under all the circumstances prevalent herein, we conclude that the Claimant should be awarded backpay at the straight time rate for two (2) days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.