

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States and Canada  
(Seaboard System Railroad

STATEMENT OF CLAIM:

1. That the Seaboard System Railroad, hereinafter referred to as the Carrier, was arbitrary and negligent in their actions, and in violation of Rule 34 of the Agreement when they failed to properly handle a return to work release issued for Carman D. C. Jackson, hereinafter referred to as the Claimant, by his personal doctor on September 21, 1984.

2. And accordingly, the Carrier should be ordered to compensate Claimant for eight (8) hours' pay at straight time rate for each day he was held out of service subsequent to September 26, 1984, and continuing until he was allowed to return to service on October 12, 1984, as the result of said violation.

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 is employed as a Carman at the Carrier's Osborn yard facility in Louisville, Kentucky. Due to personal illness, the Claimant was granted a leave of absence on March 27, 1984. The Carrier's Chief Medical Officer approved the return of the Claimant to service on October 12, 1984.

On behalf of the Claimant, the Organization seeks eight (8) hours' pay straight time for each day he was held out of service subsequent to September 26, 1984 and continuing until October 12, 1984, when he was returned to service. In support of the instant claim, the Organization asserts that the Carrier was arbitrary in its actions when it withheld the Claimant from service more than five (5) days after notification had been given to the Carrier that he had been released by his doctor to return to work.

After an extended leave of absence, Form 7300 is to be completed by an employee's doctor and submitted to the Chief Medical Officer so that a determination could be made as to whether or not, and when an employee should be permitted to return to work. The Claimant secured Form 7300 and on September 19, 1984, the Claimant's doctor, signed the Form.

The record does not support the Organization's claim that the Claimant "presented it [Form 7300] to Carrier officials and notified them that he was ready to return to work," on September 21, 1984. The identity of the Carrier officials, and such factors as the "where and when" of presenting Form 7300 on September 21 is not disclosed by the Organization. On the other hand, Form 7300 is stamped "Received September 26, 1984 Medical Department." Accordingly, the Board is persuaded that Form 7300 was mailed to the Carrier's Chief Medical Officer and received by the Medical Department during his absence on September 26, 1984.

In submitting the Form to the Medical Department, the Claimant's doctor failed to disclose some of the information called for by the Form. Although the Form had been signed on September 19, 1984 and indicated that the Claimant was qualified to safely return to his regular assignment, the date he was to do so, was not supplied. In addition, the treatment that had been received by the Claimant, the medication prescribed for his anxiety depression and seizure disorder were not set forth, although such information was called for, by Form 7300.

Upon returning to his office, on October 1, 1984, the Carrier's Chief Medical Officer wrote a letter to the Claimant's doctor indicating that due to the "potentially hazardous nature to himself and other employees" he was "unable to return (the Claimant) to service using the short Form 7300." In his letter he requested "full details regarding the seizure disorder, prognosis and all medications being taken." He was "particularly interested in what diagnostic studies have been performed to establish the seizure disorder diagnosis and their results." He concluded his letter by stating that until he hears from him "in this regard" he "will be forced to withhold" the Claimant from service.

On October 5, 1984, the Claimant's doctor wrote back indicating that the Claimant has been "seizure-free" and that the drug Dilantin which he had taken on a trial basis can be discontinued. This letter was received by the Carrier on October 12, at which time the Carrier's Chief Medical Officer approved the return of the Claimant. Moreover, by telephone, the Carrier was notified by the Claimant's doctor of the Claimant's release to return to work.

This Board cannot conclude that the Carrier was negligent because the Carrier Officer sent his letter to the Claimant's doctor on October 1, 1984, some five (5) days after the letter was received by the Medical Department. In arriving at this conclusion, the Board cannot overlook the fact that Form 7300 was dated on September 19, 1984 after which it was apparently mailed by the Claimant's doctor and received by the Medical Department some seven (7) days later, on September 26, 1984.

The Organization indicates that although the Carrier's Chief Medical Officer wrote to the Claimant's doctor on October 1, the letter was postmarked on October 5 and received by him on October 9, 1984. No evidence of the postmark is in the record. It should be noted that on October 5, 1984 the Claimant's doctor sent a letter to the Carrier's Chief Medical Officer supplying him with the information that he requested, which was not disclosed on Form 7300. The Board has inferred that sometime before October 5, the Claimant's doctor was notified to provide details on the Claimant's treatment, medication and diagnosis on his seizures. Moreover, the Organization has failed to explain why he sent his letter on October 5, providing the very "details" the Carrier's Chief Medical Officer requested, in his letter, dated October 1, 1984. In light of these considerations, the Board has concluded that the Carrier's Chief Medical Officer sent a letter to the Claimant's doctor on October 1.


Furthermore, it may very well be that on October 12, by telephone, the Claimant's doctor provided the Medical Department with the same information that was set forth on Form 7300 which was received by the Medical Department on September 26, 1984. However, it must be underscored that on October 12, 1984, the Claimant's doctor's letter, dated October 5 was received by the Medical Department. As already established, his letter, complied with the Carrier's Chief Medical Officer's request which was set forth in his letter dated October 1, 1984. Thus, it was the Claimant's doctor's October 5 letter in conjunction with the partially completed Form 7300 which formed the basis of the Carrier's decision to approve the Claimant's return to work on October 12, 1984.

In light of the Claimant's illness, which included treatment for seizures, the Carrier's Chief Medical Officer's October 1, 1984 letter in which he sought various details that were not supplied on Form 7300 is consistent with the Carrier's "obligation to all of its employees, including the Claimant, to make reasonably certain that an employee is physically capable of performing his duties." Second Division Award No. 7087. Based on the record, the Carrier has acted in good faith. Second Division Award No. 5652.

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 3rd day of August 1988.