

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood Railway Carmen/Division of TCU
PARTIES TO DISPUTE: (
(Pacific Fruit Express Company

STATEMENT OF CLAIM:

1. That the Pacific Fruit Express Company violated the controlling agreement, particularly Rules 19, 20, 21 and 37, when Carman N. C. Rivera, Jr. was recalled to service on January 14, 1987, but was not permitted to begin work until February 13, 1987, Tucson, Arizona.

2. That accordingly, the Pacific Fruit Express Company be ordered to compensate Carman Rivera for all work days lost beginning January 14, 1987 through February 17, 1987.

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 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.

Claimant, a Carmen Welder, was furloughed by Carrier on July 8, 1985. On January 14, 1987 he was mailed a recall notice. Claimant responded on January 19, 1987. Inasmuch as he had been furloughed for over twelve months he was required to undergo an extensive medical examination before being allowed to return to service. Upon completion of the examination, by Industrial Health Services at Claimant's work location, Tucson, Arizona, his Medical Form (CS-2946-A) was sent to Carrier's Chief Medical Officer for review and approval. Upon receipt, it was noted that Claimant had not signed the form. On January 28, 1987, the form was returned to Claimant for his signature. The signed form was not returned to the Chief Medical Officer until February 17, 1987. That same day, after reviewing the medical paperwork, the Chief Medical Officer advised Carrier, by phone, that Claimant was approved for duty. Claimant was notified and returned to work the next day, February 18, 1987.

We are asked to award compensation to Claimant on an allegation that Carrier improperly delayed his return. From the facts of record it is clear that any delay in Claimant's return was caused by his failure to sign the medical form he completed at the time of his examination. The signature part of the medical form contains certain standard release language, which is not unusual in such situations. Requiring that an individual's signature be affixed on his medical examination form before authorizing a return to duty is not, in and of itself, an inordinate requirement, nor would it be inappropriate conduct on the part of Carrier officials.

Additional delay occurred between the date that the medical form was returned to Claimant and the date it was again received by the Chief Medical Officer. However, the record is incomplete as to what the cause of this delay was. We do not know if the delay was caused by Carrier inaction or if Claimant delayed in effecting the return of the signed documents. In such cases the burden rests with Petitioner to demonstrate that responsibility for the delay was that of the Carrier or its agents. This has not been demonstrated, indeed, it has not even been attempted.

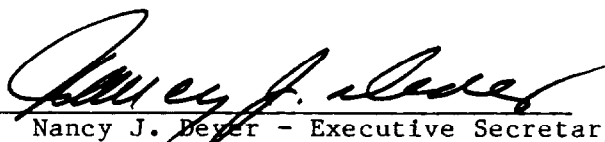
It is clear that the initial delay which occurred in returning Claimant to duty was the result of his failure to sign his medical form and was not caused by dilatory action on the part of Carrier. It is not clear what were the reasons for the second delay and we are not entitled to speculate as to its cause. The Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1990.