

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current agreement, Communications Department Equipment Installer K. R. Carrier was unjustly treated when he was withheld from service after September 26, 1988 due to Southern Pacific Transportation Company delaying his reinstatement until November 2, 1988.

2. That accordingly, the Southern Pacific Transportation Company be ordered to compensate Equipment Installer K. R. Carrier for loss of wages for the period of September 26, 1988 to November 2, 1988 with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages; including interest at the rate of ten percent (10%) per annum.

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.

This case relates to an unjustly withheld from service Claim. The facts as developed from the record are set forth as follows:

On July 25, 1988, Claimant reported off sick from duty. The notation in the El Paso Log Book, D.A.R. Reporting reads, "Bad back - seeing doctor." On August 9, 1988, the Assistant Superintendent, Communications Department, sent Claimant via certified mail a CS-5662 Form requesting medical information, in part to be completed by Claimant's attending physician as an antecedent condition for returning to service. There are no indications that

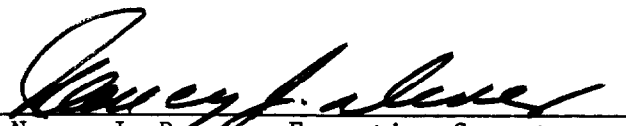
Claimant responded to this notice and another notice (form) was sent via certified mail dated September 6, 1988. On September 22, 1988, Claimant was examined by his physician and cleared for work without restrictions. The physician's report, contained in the Return to Duty Status portion of the CS-5662 report was received by Carrier's Chief Medical Officer, on September 29, 1988. Apparently, since this was the first time Carrier's Chief Medical Officer was aware of Claimant's back condition and since Claimant's physician noted on his September 22, 1988 medical report that he saw Claimant for the first time vis-a-vis this condition on September 22, 1988, the Chief Medical Officer understandably requested additional information. To be sure, the uncompleted and unsigned form returned in the envelope postmarked October 6, 1988, on its face, would justify some concern, but the medical notes also contained in that envelope provided substantive information. More pointedly, in view of Claimant's back problem, which had historical roots, it was not further unreasonable for Carrier's Chief Medical Officer to require a Carrier-directed physical examination. The medical notes supplied by Claimant's physician which were based upon statements made by Claimant indicate a back condition history. However, since the Board believes that the return to duty carrier-directed physical examination could have been scheduled earlier than October 24, 1988, most likely by October 12, 1988, and since Claimant could have returned to duty within five calendar days of the physical examination, it is not unreasonable to conclude that he could have been returned to duty by October 17, 1988. Accordingly, we will direct that he be made whole at the straight time compensatory rate for the time he was unreasonably kept out of service, namely for the period October 17, 1988, through November 1, 1988. There is no justification to award interest. The Claimant returned to service on November 2, 1988.

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 18th day of December 1991.