Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12491
Docket No. 12320
92-2-91-2-109

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(CSX Transportation, Inc. (formerly Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

"1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "carrier") violated the provision of Rules 37 and 38 of the Shop Crafts Agreement between Transportation Communications International Union-Carmen's Division and the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carman L. D. Evans (hereinafter "claimant") when the carrier failed to return the claimant to service at a reasonable time after he had been released to return to service.

2. Accordingly, the claimant is entitled to be compensated for all lost time from August 21, 1987 through September 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 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.

On September 20, 1987 a claim was filed by the Local Chairman of the Organization at the Carrier's Raceland Car Shop on grounds that the Claimant's return to work was unnecessarily delayed. According to the claim, the Claimant presented a return-to-work release from his personal physician on August 21, 1987. This information was forwarded to the Carrier's Chief Medical Officer who released the Claimant to return to duty on September 17, 1987. Argument by the Organization is that the 27 days it took the Chief

Medical Officer to approve the release was too long. After the claim was denied by the Carrier, the Organization further argued that arbitral precedent indicated that 5 days is a reasonable amount of time for a Carrier's Medical Officer to process such information and get an employee back to work. The Carrier does not deny that such precedent exists, but it argues that "...other (arbitration) Awards (in this industry) have held that each situation must stand on the facts of (each) case."

A review of the record shows that the Claimant had turned in medical forms to the Carrier, from his physician, in order to return to work. Those forms show, however, that the Claimant's attending physician had not provided specific information on August 21 to explain the nature of the Claimant's illness. According to an internal memo from the Chief Medical Officer to the Labor Relations Department this latter information had not been received by the Medical Department until September 8, 1987. However, this supplentary information was provided to the Carrier by the Claimant's physician under date of August 26, 1987. An Electronic Medical Qualification Notice was then sent to the Raceland Shop by the Medical Department on September 17, 1987, stating that the Claimant could return to work.

Since the follow-up information was not provided until August 26, 1987, and the decision was not rendered until September 17, 1987, such is more or less the proper time frame in which to consider the instant claim. It is unclear from the record why it took the follow-up information from the Claimant's physician from August 26 to September 8 to get into the hands of the Carrier's Medical Department. The Medical Department also admits, which is supported by the record, that it took 9 calendar days to process the return-to-work information after that Department had belatedly received it.

Arbitral precedent establishes that Carriers have an "...inherent managerial right to withhold employees from employment until the question of their physical qualifications has been clarified" (See PLB 3898, Award 22; also Second Division Award 7230; Third Division Award 14127). However, such precedent also holds that Carriers are liable for "...undue and unwarranted delay(s) in ascertaining a returning worker's physical fitness" (Third Division Awards 26263, 21560; and Second Division Awards 6758, 6704, 7247). A number of Awards suggest that a maximum of 5 days to process papers in return-to-work cases, comparable to the instant one, is sufficient time to get an employee back to work (See Second Division Awards 5537, 6278, 6331). Although the Board will not here disagree that there may be special circumstances in which it would be reasonable for a Carrier to take longer than this minimal time frame, and that each case must be taken on its own merits, as the Carrier suggests, there is no evidence here that the 5 day limit was not reasonable and the Board rules accordingly.

Although the Claimant's physician provided additional information under date of August 26, 1987, it is practical to

conclude that this information was not actually in the Carrier's hands until the following day. There were 21 days between August 27, and September 17, 1987. That time frame, minus 5 days, amounts to 16 days. Assuming that the Claimant would have worked a normal 5 day week, he also would not have worked at least another 4 days of those 16. The Carrier owes Claimant 12 days' pay.

The Organization also argues that there was violation of Rules 37 and 38 of the Agreement. These Rules are not applicable to this case and that part of the claim is dismissed.

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 9th day of December 1992.