

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13018
Docket No. 12902
96-2-94-2-49

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications
(International Union

PARTIES TO DISPUTE: (

(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM: "Claim of the Committee of the Union that:

1. That the Carrier has violated Rule No. 16.1 of the Controlling Agreement when Carman James Winn was refused the right to return to work without being able to take a 'return to work examination.'
2. That Carman James Winn be compensated for all time lost commencing March 10, 1993 through March 18, 1993. James Winn was not returned to service until March 22, 1993."

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 employee 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 Board finds the following probative evidence of record. The Claimant underwent a serious heart valve replacement on February 17, 1992. After nearly a year of recovery, the Claimant's physician in January 1993 submitted a return to duty recommendation without any work limitations. The record before this Board is that the Carrier denied the return-to-duty by letter dated February 8, 1993 based upon "recent dizzy spells" and "current medication."

The actual claim at bar is based upon a letter submitted by the Claimant's physician re-evaluating his medical status. That letter dated March 4, 1993 indicates that readjusted medication ended the dizzy spells fifteen weeks earlier and recommends a return to work without restrictions. The Claimant on March 9, 1993 submitted a second back to work release from another doctor and requested reinstatement. The record at bar is that the Carrier reviewed the medical information and notified the Claimant on March 18, 1993 that he could return to active service. The Claimant returned to work on March 22, 1993.

The Organization alleges that the Carrier should have acted in a more expeditious manner following the physician's letter of re-evaluation on March 4, 1993. It suggests that beginning March 10, 1993 the Claimant should be compensated for lost work opportunity.

A careful review of the on-property record reveals that this dispute centers on the appropriateness of the lag time between the Claimant's release by letter dated March 4, 1993 and his return to service. On July 9, 1993, the Carrier responded to that letter by indicating that it had not received it until "the week of March 8, 1993" and had "immediately" submitted it to review by the Carrier's Chief Medical Officer. The Board lacks a full record as to the dates of submission and receipt of all material evidence. This Board finds nothing in this record as to why the review took this length of time. The Claimant was not asked for clarification, nor was he subjected to a physical examination. There is nothing in the on-property record to explain the time lag. While we agree that Carriers must assure the safety of the workplace, this record is void of any reasonable explanation by the Carrier as to why the Claimant's request to return demanded more than usual consideration. This Board is not vested with the right to speculate or assume, but to consider evidence of record. Finding none, this Board holds that the Agreement was violated when the Carrier failed to timely review the Claimant's request and prolonged his medical absence.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.