

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13308

Docket No. 13113

98-2-96-2-13

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)**

STATEMENT OF CLAIM:

- "1. Carman P.G. Mohler was unjustly held out of service, awaiting medical approval, from November 8, 1994 until December 16, 1994.**
- 2. That Carman P.G. Mohler be awarded the amount of thirty (30) days at the Carman-welder rate of pay in effect on December 16, 1994."**

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 were given due notice of hearing thereon.

The record reflects that Claimant was released by his attending physician to return to work without limitation on November 8, 1994, after a period of absence due

to illness, and that he forwarded this documentation to Carrier on November 7, 1994. It is undisputed that Chief Medical Officer Goldman sent an overnight letter to Claimant on November 9, 1994 explaining that due to the nature of his illness Carrier felt it necessary to have him further evaluated. Because the nature of Claimant's illness is confidential, none of the medical documentation was included in the record, nor were the specifics of the additional evaluation which was conducted. The Organization did not dispute Carrier's assertion that subsequent discussions of a confidential nature were held between Claimant and Carrier's Risk Management Department, and that mutual arrangements for Claimant's return to work were finalized on December 6, 1994. Carrier's Medical Department was notified and Claimant was deemed medically qualified to return to service, which he did on December 16, 1994.

The Organization's claim is based on the asserted inordinate delay of 38 days between the time when Claimant was released by his own physician and when he was finally returned to work. The Organization argues that there was no additional medical information requested of Claimant during this period of time, and that the entire delay rests with Carrier. It relies upon numerous cases finding five working days to be a reasonable period of time for Carrier to make its evaluation and return an employee to work after he has been medically released by his own physician, including Second Division Awards 12472, 11275 and 8113, in arguing that Claimant should be compensated for the excessive delay.

Carrier argues that it properly withheld Claimant from service pending further medical evaluation due to the circumstances surrounding the nature of his illness, and notes that it has the responsibility and duty to set safety standards and ensure that its employees are physically and mentally capable of performing their assigned duties before they are returned to work, citing Second Division Awards 12049, 10124, 7497, 7134 and Third Division Awards 25013, 23008 and 6753. While Carrier agrees that it is required to act without undue delay once it has all necessary information from which it can make a fitness determination, it contends that each case must be decided on its own merits, and that the instant case reveals an ongoing process between Claimant and its Risk Management Department accounting for the delay in finalizing his return to work arrangements. Carrier cites Third Division Award 18798 in support of its request that the claim be denied.

There is no question that Board precedent establishes that although a Carrier has every legitimate right to satisfy itself that an employee is physically fit to return to his

responsibilities after a period of disability, it has a responsibility to act with reasonable speed in doing so. Numerous Awards suggest that five working days would be a reasonable period within which to return an employee to work following a physical examination and/or a medical release. See Second Division Awards 12472, 11275, 8113, 7472, 7131 and 6704. However, each case must be considered on its own merits in determining whether Carrier's delay was reasonable. Third Division Awards 28798 and 20344.

Upon a complete review of this record, the Board concludes that the Organization has not sustained its burden of proving that the delay between November 8 and December 6, 1994 was unreasonable. There is no doubt that Carrier acted promptly in notifying Claimant on November 9, 1994 that it required additional action on his part in order for it to ascertain his fitness to return to work. Apparently, that action was in the form of contacting Carrier's Risk Management Department and engaging in further consultations with them in an effort to arrive at a satisfactory return to work arrangement. The Organization did not dispute Carrier's contention that such arrangement was finalized on December 6, 1994. Thus, the Organization did not prove that Carrier should be held accountable for the delay between November 8 and December 6, 1994.

However, the record does not disclose why it took Carrier's Medical Department ten days to effectuate Claimant's return to work after the arrangement agreed to by the Risk Management Department was finalized. There was no showing that any additional information or action had to be taken, other than notifying local supervision that Claimant was medically qualified to return to service. We can see no reason why this could not have been accomplished within two days. Accordingly, the Board determines that Carrier should be held responsible for the unreasonable delay in returning Claimant to work between December 8 and December 16, 1994. We note that the record reveals that Claimant was receiving disability benefits for the period from October 26 to December 15, 1994. Thus, Carrier's liability for the period between December 8 and December 15 would be offset by appropriate deductions for the insurance benefits received by Claimant which are attributable to that period of time.

AWARD

Claim sustained in accordance with the Findings.

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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 6th day of August 1998.