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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13378

Docket No. 13256

99-2-97-2-24

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

(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway Company violated the terms of our current agreement when they refused to allow carman E.W. Clement to return to service after release from his personal physicians and the Carrier doctor.
2. That accordingly, the Springfield Terminal Railway company be ordered to compensate Carman E.W. Clement in the amount of eight (8) hours pay for each day he was improperly withheld from service commencing March 18, 1996 through October 4, 1996. Additionally, including all benefits and overtime he may have lost as a result of the Carrier's actions.”

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.

At the heart of this dispute is the question of whether Carrier unfairly delayed Claimant in his return to work following a disability. This is certainly not a case of first impression. (See, for example Second Division Awards 12472; 11275; 9369). A review of the facts shows that Claimant notified Carrier of his desire to return to service in early March 1996. Carrier had him examined by Carrier's own physician on March 13, 1996. As a result of that examination, Claimant was deemed unfit to return to work.

On April 12, 1996 the Organization, pursuant to Rule 35 of the Agreement between the Parties, requested a Board of Doctors to resolve the conflict between Claimant's physician and Carrier's medical personnel. Following several exchanges of correspondence on the matter, Carrier informed the Claimant that the requested Board of Doctors had been chosen and the examination would be held on July 1, 1996. On July 17, 1996 the Board issued its decision advising that Claimant should continue to be withheld from service, and the General Chairman was so advised by Carrier on July 18, 1996. Claimant was officially notified of Carrier's decision on July 30, 1996, and told that he was required to take further steps before returning to service. That letter read in pertinent part as follows:

"... Dr. Bielecki has placed a 50-pound lifting restriction upon you, and both doctors recommend a regimen of conditioning and reconditioning prior to your return to service. Both doctors are also concerned that you receive training in proper body mechanics in order to minimize the chances of future injury.

Upon receipt of this letter, please advise this office of the steps you have taken to satisfy the medical doctors' concerns and recommendations.

Additionally, it is requested that you keep this office updated on a monthly basis, advising of your progress and related physical status. . . ."

On August 2, 1996, Claimant notified Carrier that he had enrolled in a physical therapy program for conditioning or an evaluation. He also stated that he would update the Carrier regarding his progress and the results of his program in the coming few weeks. By letter of August 14, 1996, the Organization again protested the Carrier's withholding of Claimant from service, contending that the job description upon which

the Carrier was basing its decision was inaccurate, unrealistic and outdated, and grossly overstated the weight Claimant would be expected to lift. That protest was rejected by Carrier's letter of August 16, 1996.

On September 9, 1996, Claimant notified Carrier of his successful completion of a physical therapy program, and enclosed his evaluation from that program. Claimant was examined by the Carrier's medical officer on September 27, 1996, and was returned to service on October 7, 1996.

At the outset, the Organization has raised several procedural objections regarding Carrier's handling of this matter. The Organization filed simultaneous claims, all of which were processed with reasonable alacrity by Carrier. Moreover, the Organization has failed to prove -- as it alleges -- that the incorrect Carrier officials responded to those claims. Thus, the Board finds no basis for accepting the Organization's position regarding possible procedural irregularities in this case.

With respect to the merits, Carrier was well within its rights to withhold Claimant from service pending medical approval to return to work. Carrier complied with the mandates of Rule 35 regarding convening of a Board of Doctors, and, although Claimant may not have been pleased with the outcome, there is no showing that their decision was based upon error. The Organization has alleged that an employee performing Claimant's job does not need to lift more than 50 pounds. Yet, according to his physical therapy evaluation, the Claimant himself told his physical therapist that the maximum weight he had to lift was 75-80 pounds.

Once Carrier's medical officer examined Claimant, he was returned to service ten days later. That does not appear to this Board to be an inordinate delay in his return to service. See also, Third Division Awards 31595 and 31824.

In light of the foregoing, the Board finds no basis upon which to sustain this claim.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 12th day of April 1999.