

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13425

Docket No. 13310

99-2-97-2-82

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**
(**Transportation Communications International Union**
(**CSX Transportation, Inc. (former Baltimore &**
(**Ohio Railroad Company)**

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

- 1. That the Carrier violated Rule 41 of the controlling Agreement, as amended, whenever Carman C. J. Edowski was removed from service pending a medical examination.**
- 2. That the Carrier be ordered to make Carman C. J. Edowski whole for all time lost and benefits resulting from being removed from service pending a medical examination."**

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.

On April 9, 1996 the Claimant openly discussed at a safety meeting certain health problems he was having and some side effects he was feeling because of medication he was taking. At that meeting the Claimant stated that the medication made him feel disoriented and sleepy. Upon hearing this the Supervisor informed the Claimant that he could not drive any company vehicles until the Carrier's Medical Director evaluated his medical records in order to determine if it was safe for him to operate a vehicle. According to the record the Claimant became upset over this. He then proceeded to erase his time card and stated that he was going home sick for the day. The Supervisor spoke with the Claimant by phone that same evening. During this conversation the Supervisor noted that the Claimant appeared to be disoriented. The latter commented to the Supervisor on the amount of medication he had to take and wondered why the Carrier would not give him a disability. The Claimant did not return to work on the following day. Thereafter the Supervisor decided that the Claimant should have a complete medical evaluation. A month later the Claimant still had not completed a MD-3 form, nor had he returned such form to the Medical Director as he had been instructed. It was not until July 8, 1996, or almost 90 days after April 9, 1996 when the Claimant had first clocked out sick, that the Medical Director authorized payment for a medical evaluation of the Claimant's condition so that it could be determined if he could return to service or not. On August 14, 1996 the Claimant was medically qualified to return to service.

On August 28, 1996 the Local Chairman filed a claim on grounds that the Carrier had "...failed to act swiftly..." in performing a medical evaluation of the Claimant and that the Carrier was, therefore, in violation of Rule 41 of the Agreement, which reads, in pertinent part, as follows:

"So far as shop craft employees are concerned, where they have been accepted for employment and are in our service as employees, they cannot be denied employment pending physical examination."

Upon review of the record the Board concludes that the Supervisor made a sound decision, in view of information provided by the Claimant himself about his own health, in requesting that the Claimant be medically evaluated. As far as can be determined from the record the Claimant could have expedited his return to work after April 9, 1996 by returning the MD-3 form in a timely manner. There is no evidence that he did so. Exactly why he did not do so is unclear and is best understood by the Claimant himself. There is also no evidence in the record that the Claimant made any effort to

contact the Carrier during the almost 90 days before he was contacted by the Medical Director. On the basis of the evidence of record no other conclusion is warranted in this case except that the responsibility for the delay in the Claimant's return to work after he left on April 9, 1996 was totally his own.

Reference to other Rules by the parties in the handling of this claim on the property, such as Rule 19, is misplaced.

AWARD

Claim denied.

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 16th day of June 1999.