

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13529

Docket No. 13426

00-2-99-2-29

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood Railway Carmen Division**
(**Transportation Communications International Union**
(**CSX Transportation, Inc. (former Chesapeake and Ohio**
(**Railway Company - Pere Marquette)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Carrier violated Rule 35 of our current Agreement when they unjustly withheld Carman C. Peterson out of service from January 17 to January 27, 1998, pending medical examination by Claimant’s personal physician.
2. That accordingly, CSX Transportation, Inc. be ordered to compensate Carman C. Peterson 64 hours at straight time rate of pay, 48 hours at time and one-half rate of pay, and 10 hours at double time rate of pay.”

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 in this dispute states without contradiction the Claimant reported to his General Foreman on January 16, 1998 that, owing to back pain, he was unable to perform his regular duties. Further, the Claimant advised that his personal physician had already scheduled an examination for him with a neurologist on January 21, 1998.

Based on this information, the General Foreman gave the Claimant a note stating he was "removed from service pending the outcome of this [neurological] examination."

The Organization contends that the Claimant was improperly treated on the basis his removal should have been preceded by an examination by the Carrier's physician. There is no merit to this argument, because it was the Claimant himself who stated his inability to work. The Carrier may not be faulted for its willingness to take the Claimant's word as to his physical condition.

The Organization also cites Rule 35, requiring an Investigation prior to dismissal or suspension. The General Foreman's use of the phrase, "removed from service" may have inadvertently given the impression of the imposition of discipline. Such is obviously not the case. The Claimant stated his inability to work and the Carrier reasonably withheld him from service pending medical assurance as to his condition. This was specified by the General Foreman, who limited his action to the period "pending the outcome of the examination."

The Claimant was examined as scheduled on January 21; the neurologist advised the Claimant's physician of his negative findings; the Claimant's physician advised the Carrier's Medical Department on Friday, January 23; and on Monday, January 26, the Carrier advised the Claimant he could return to work on the following day.

The Claimant's non-working status was at his own request and he was directed to return to work as soon as assurance was given as to his fitness for duty. The Carrier acted in the Claimant's interest and bears no responsibility for his short absence.

The Carrier also raises a procedural question in reference to the timing of bringing the dispute to the Board. In view of the foregoing, this aspect requires no review.

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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 27th day of July, 2000.