

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13532

Docket No. 13437

00-2-99-2-31

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

**(Brotherhood Railway Carmen, Division
(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 arbitrarily withheld Carmen Gary A. Burnett from service after release from his personal physician and physical from the carrier physician.
2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Gary A. Burnett in the amount of twenty-five (25) days pay, effective October 21, 1997 to and including November 25, 1997, eight (8) hours per day for a total of \$3226.00.”

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.

This claim is for time lost between the date the Claimant's doctor certified him fit to return to service and the date he actually was permitted to return.

The Organization contends five working days have been held as the benchmark by Board Awards. This Board, after reviewing other Awards on this subject, finds however, that the five-day window is not a hard and fast rule; that each case must stand on its own merits.

In this dispute, the Claimant was advised by his own doctor on October 6 that he had sufficiently recovered from his heart problem and that he could resume full service on October 13. The Claimant advised the Carrier on October 8 of that fact.

The Carrier immediately scheduled an appointment with their doctor on October 14, but canceled the appointment in the AM of October 14 and rescheduled same for October 20 as the Carrier contends the Claimant was not able to furnish his medical records from his personal doctor by October 14. On the other hand, the Organization stated that the Carrier waited until the day of the appointment on October 14 to advise the Claimant that he needed his medical records.

This is a "he said, they said" issue that without further input develops into an irrefutable statement of facts that this Board cannot resolve. A statement from the Claimant concerning the medical papers would have placed the onus back on the Carrier's shoulders. As the matter now stands, the delay to October 20 rests with the Claimant.

Regarding the time from October 20 to October 24, when the company doctor on October 20 told the Claimant he was OK for work, but prior to releasing him for work, the medical findings would have to be forwarded to a second doctor for that doctor's opinion, is not unusual. This Board finds nothing wrong with one doctor seeking the opinion of another. Just as it is fact that not every Carman is fully experienced in all phases of work that may be required of the craft, doctors also specialize. The delay from October 20 to October 24 was not unreasonable, nor was it unreasonable for the Claimant to have to wait until November 7 for an appointment to take a stress test. Why it took 10 days for results of the stress test to be furnished the Claimant is unknown, but neither the Carrier nor the Claimant can be faulted. When the Claimant received the

stress test results, he immediately furnished them to the Carrier, but he was not allowed to resume work until November 26, nine days later.

It is not unreasonable for the Carrier to have assurances of their own medical people that the Claimant, who had been off for several months with a heart problem, had recovered sufficiently to assume full duty without restriction.

The only delay in this instance was the period between November 17 and November 21, when apparently the Claimant's latest stress test results were misplaced.

The Claimant is to be paid for eight hours straight time for each work day the Claimant lost commencing with November 18, 1997, through November 21, 1997.

AWARD

Claim sustained in accordance with the Findings.

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 27th day of July, 2000.