

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13668

Docket No. 13473

02-2-99-2-71

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(International Brotherhood of Electrical Workers
(System Council #16)

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- “1. That the UP erred and violated the current Agreement, in particular, but not limited to Rule No. 17, when Electrician Doug Pieklik was inappropriately deprived of three (3) days’ pay on July 4, 8 and 9, 1998.
2. That accordingly, the UP be ordered to compensate Electrician Doug Pieklik three (3) days’ pay, twenty-four (24) hours, at his pro-rata rate.
3. That management be made to immediately stop its harassment of the members of Local Union 1832, IBEW.
4. That management cease making threats by using nonexistent policies.”

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 Claimant, an Electrician at the Kansas City, Missouri, Locomotive facility, had a workweek of Wednesday through Sunday with Monday and Tuesday as rest days. The Claimant worked Wednesday, July 1, 1998 through Friday, July 3, 1998.

Although scheduled to work Saturday, July 4, 1998, the Claimant called off sick for that day. According to the Carrier, this was the Claimant's seventh instance of absenteeism in the calendar year.

Further, according to the Carrier, "[a]t the time of his call he was informed that he would have to produce a physicians' statement as to the nature of his illness prior to returning to work."

The Organization disputes the assertion that the Claimant was told he could not return-to-work without a physician's statement:

"Your response also states that Mr. Pieklik was told he would need to produce a physicians statement at the time of his call. This is absolutely false. Mr. Pieklik had to leave a voice message. Mr. Pieklik in fact spoke to no human."

Sunday, July 5, 1998 was a vacation day for the Claimant. Monday, July 6 and Tuesday, July 7, 1998 were the Claimant's rest days.

The Carrier maintains an attendance policy providing, in pertinent part:

"4. A.

If an employee has been absent for medical reasons (i.e. sickness) on more than four (4) separate occasions in one calendar year, a physician's statement will be required."

The Claimant was not allowed to return-to-work on July 8, 1998 because he did not have a physician's statement. The Claimant did not provide the statement to the Carrier until July 10, 1998. As a result and because he was not allowed to work, the Claimant was not paid for July 8 and 9, 1998.

Further, according to the Carrier, the Claimant was not compensated for July 4, 1998 because he laid off sick and did not produce a physician's statement on his first workday after the holiday (July 8, 1998) when he was not allowed to work, thereby causing the Carrier to determine that the Claimant was not available for work on the first work day immediately following the holiday.

This claim followed.

While much was argued about the attendance policy, we do not have to address those assertions. The premise of the Carrier's position concerning the Claimant's availability for work on July 8 and 9, 1998 is that when the Claimant called off sick for July 4, 1998, "[a]t the time of his call he was informed that he would have to produce a physicians' statement as to the nature of his illness prior to returning to work." The Organization vigorously disputes that factual assertion. According to the Organization "This is absolutely false. Mr. Pieklik had to leave a voice message. Mr. Pieklik in fact spoke to no human."

The Carrier did not produce a statement from the individual who allegedly informed the Claimant, as the Carrier asserts, that "he would have to produce a physicians' statement as to the nature of his illness prior to returning to work." Nor did the Carrier provide other probative evidence to allow us to conclude that the Claimant was informed of that condition for his return-to-work. Without sufficient factual basis to support the underpinning of its contentions, we cannot find that the Carrier has demonstrated the premise of its argument - i.e., that the Claimant was told that he would not be allowed to return-to-work without a physician's statement. On that narrow ground, we shall sustain the claim. The Claimant shall be made whole for July 8 and 9, 1998 and shall be compensated under the Agreement for July 4, 1998 as if he called off sick on that day and returned to work on July 8, 1998.

The Organization's other assertions in the claim concerning "harassment" and "threats by using nonexistent policies" are rejected.

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 11th day of February, 2002.