

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13833

Docket No. 13725

05-2-04-2-2

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

(Brotherhood of Railway Carmen Division of TCU

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

- “1. The National Railroad Passenger Corporation violated the contractual rights of Carman David Butler when they arbitrarily, discriminatorily and without just cause, withheld him from service March 7 through April 7, 2003.
2. The National Railroad Passenger Corporation be ordered to compensate Carman David Butler the regular rate of pay for each work day he was held out of service from March 7 through April 7, 2003.”

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, who held a carman technician position at the Carrier's High Speed Rail Facility, was considered by the Carrier to be medically disqualified as reflected by medical documentation from the Claimant's physician received by the Carrier on February 25, 2003. In that documentation, the Claimant's physician stated that the Claimant's possible return to work was "not likely" and his condition was "guarded".

Further medical documentation from the Claimant's physician dated March 6, 2003 and received by the Carrier on March 7, 2003, stated that although the Claimant had been disabled since September 23, 2002 due to "significant pain and fatigue", the Claimant had "improved" and "may return to work March 7, 2003."

On March 13, 2003, the Carrier's Regional Medical Director Dr. Pinsky reviewed the medical report from the Claimant's physician and determined that additional documentation of the Claimant's condition was required.

On March 14, 2003, the Claimant called the Carrier to ascertain the status of his return to work and was advised that his physician's medical documentation was not sufficient.

On March 20, 2003, the Claimant received a certified letter from the Carrier advising him that he needed a medical narrative from his physician as well as a release.

On March 21, 2003, the Carrier's medical office faxed a copy of a letter to the Claimant's physician requesting additional information.

On March 27, 2003, the Carrier's medical office received additional medical documentation from the Claimant's physician. On the same date, the Claimant was cleared for a return to duty exam.

On April 2, 2003, the Claimant took a return to duty exam. On April 4, 2003, the Claimant was cleared to return to duty.

This claim seeks compensation for the Claimant for the period March 7, 2003 (when the Carrier received the first medical documentation from the Claimant's physician which released him to return to work) through April 7, 2003 (when the Claimant returned to work).

As of February 25, 2003, the Claimant's physician advised the Carrier that the Claimant's possible return to work was "not likely" and his condition was "guarded". Then, on March 6, 2003 — a mere nine days later — the Claimant's condition dramatically improved to allow the Claimant's physician to clear the Claimant to return to work. That quick turn around in the Claimant's condition and the limited information provided by the Claimant's physician in his March 6, 2003 release (which only stated that the Claimant had "improved" and "may return to work March 7, 2003") constituted a reasonable basis for the Carrier to seek further medical documentation from the Claimant's physician. Thus, we find that the Claimant is not entitled to compensation commencing March 7, 2003 when, for all purposes, the Carrier initially refused to begin the process to clear the Claimant to return to work.

However, the record shows that it took the Carrier until March 13, 2003 to determine that the Claimant needed to provide further specific medical documentation and, although, the Claimant was advised of that fact on March 14, 2003 when he called to inquire about the status of his return to work, the Claimant was not fully apprised of what was needed until March 20, 2003, when the Claimant received a certified letter from the Carrier advising him that he needed a medical narrative from his physician as well as a release. We find that delay unreasonably deprived the Claimant of the ability to satisfy the Carrier's requirement to provide further medical documentation so as to allow the Claimant to return to work in a timely fashion. Under the circumstances, we find that Claimant is entitled to five days pay due to the delay caused by the Carrier.

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.

Form 1
Page 4

Award No. 13833
Docket No. 13725
05-2-04-2-2

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 1st day of April 2005.