

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14000
Docket No. 13874
09-2-NRAB-00002-080024**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

PARTIES TO DISPUTE: (
(International Brotherhood of Electrical Workers
(BNSF Railway Company

STATEMENT OF CLAIM:

- "1. That in violation of the controlling Agreement, Rule 12 in particular, the BNSF Railway Company erred in the recall of Ms. Lori Rice by delaying her returning to work until February 2, 2007, instead of returning her on January 19, 2007; the release date from her personal physician.**
- 2. Accordingly, the BNSF Railway Company be ordered to promptly make Electronic Technician Lori Rice whole by providing compensation for January 19, 20, 21, 22, 26, 27, 28, and 29, 2007 in the amount of 10 hours at the pro rata rate for each of the aforementioned dates for which she would have rendered service if the carrier had returned her to work in a timely manner."**

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 was on an extended medical leave. While the record does not state when the Claimant began this medical leave, it is stipulated that the Claimant was off from work in excess of six months. Under the Carrier's policy for reporting to work after absence due to a medical condition, the Claimant's treating physician was required to complete a Medical Status Form recommending when the Claimant was medically able to return to work with or without restrictions. In addition, because the Claimant had been absent for more than six months, she was required to pass a "Return to Service Test." The Organization did not challenge the Carrier's right to require sufficient medical documentation prior to the Claimant's return to work, nor the Carrier's right to require the Claimant to submit to and pass the return-to-service examination.

The gravamen of this dispute is whether there was an unreasonable delay in returning the Claimant to service after her treating physician released her to return to work on January 19, 2007, and whether such delay was attributable to the Claimant or to the Carrier. In making this determination, the Board confined itself to documentation that was supplied during the handling of the case on the property as opposed to unsubstantiated statements of interest by either party.

The initial fact that must be determined is when the Claimant's treating physician sent the completed Medical Status Form to the Carrier's Medical Department recommending that the Claimant be returned to work on January 19, 2007 with no restrictions. The Carrier stated in its August 20 letter to the General Chairman that the Claimant's treatment provider informed the Medical Department on January 15 that the Claimant would be able to return to service and that the Medical Department received the doctor's report on January 20, 2007, which report contained the January 19 recommended return date. The Carrier states that the Medical Department approved the Claimant's return to duty on January 24, 2007, at which time the Claimant's Supervisor was advised to arrange for the Return to Service test. The Carrier, based on this timeline, argues that the four days between January 20 and January 24, 2007, is not an unusual amount of time to review the Claimant's several medical conditions and determine her fitness for duty.

However, during the on-property handling, the Organization supplied the Carrier with documentation establishing that on January 9, 2007, the Claimant's

physician faxed the completed Medical Release Form to both CareSys, the Carrier's medical provider, as well as to the Carrier's Medical Department. Even disregarding the date of transmission, it appears that at least five days went by before any further action was initiated by the Medical Department.

The Board will now address the time lapse between January 24, when the Medical Department cleared the Claimant to return to work, and February 2, 2007, when the Claimant returned to service. As noted above, the Carrier had the right to have the Claimant take and pass its return-to-duty examination prior to allowing her to return to work. The required examination was arranged for and conducted on January 26, 2007 (within two days) which certainly was not dilatory. While the Organization alleged that delay was caused by the Claimant's supervisor's insistence on being present at the time the test was taken, there is no proof offered to support this allegation. Once the Carrier received the results of the Claimant's return-to-work examination on February 1, the Claimant was permitted to return to work on the next day, February 2, 2007. There is nothing in the record to suggest that the time between the Claimant's return-to-duty examination and her actual return to duty was unreasonable, nor in excess of the time that such process normally takes on this property.

Based on a careful examination of the record, the Board finds that the delay between January 9 and 15, 2007 was unreasonable and contributed to the delay in scheduling the Claimant's return-to-duty examination. Accordingly, the Board finds that the Claimant should be compensated ten hours at the pro-rata rate for January 19, 20, 21 and 22, 2007, but that the balance of the claim remain denied.

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

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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 9th day of April 2009.