

Award No. 14761
Docket No. SG-14541

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended particularly Rule 45, when it failed and/or refused to allow Signal Maintainer C. E. Bouteller to return to work at 8:00 A. M. on July 16, 1962, after he had been released and okayed for work by the company doctor.

(b) The Carrier be required to pay Mr. Bouteller for all time lost July 16, 17, 18, 19, 20 and 23, 1962.

EMPLOYEES' STATEMENT OF FACTS: As indicated by the Statement of Claim this dispute involves claim for six (6) days pay on which Claimant Bouteller was not allowed to return to service from leave of absence, even though he had been given an OK by Company doctors and had given the required advance notice of his desire to return in accordance with the provisions of Rule 45 of the Agreement.

Signal Maintainer C. E. Bouteller had been on leave of absence which was necessitated by his physical condition following surgery which had been performed by Dr. L. C. Kavan, a Rock Island Employee's Hospital Association doctor as well as a Company doctor. Prior to July 10, 1962, he was examined and released to return to duty by Dr. Kavan and Dr. Moody, who is also a Company doctor. Therefore, on July 10, 1962, Mr. Bouteller wired Signal Engineer H. Jensen, Supervisor of Signals and Communications E. L. Bartholomew and Relief Maintainer M. D. Stowe that he would return to work on July 16, 1962. This message was sent jointly to all concerned, and it was in accordance with Rule 45(g) of the current Agreement.

When he reported for work on July 16, 1962, Supervisor Bartholomew advised him that he could not return to work until he had been okayed by Chief Surgeon J. M. L. Jensen, even though Assistant Signal Engineer W. B. Johnson had advised General Chairman R. A. Watkins in conference on July 11 at Chicago that the maintainer would return to work on July 16.

The letters to which the Brotherhood has referred represent the handling of this case on the property and are reproduced and included in this ex parte being identified as Brotherhood's Exhibit Nos. 1-16.

This dispute has been handled in the usual manner on the property up to and including the highest officer designated to handle such claims without reaching a satisfactory settlement.

There is an agreement between the parties to this dispute bearing an effective date of July 1, 1952, as amended, which by reference thereto is made a part of the record in this dispute. (Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS:

1. There is an Agreement between the Chicago, Rock Island & Pacific Railroad Company and its employes represented by Brotherhood of Railroad Signalmen bearing an effective date of July 1, 1952. A copy of this Agreement is on file with your Board and by reference is made a part of this submission.

2. Effective April 5, 1962, the claimant was granted a 90-day Leave of Absence, account illness. This Leave was due to expire July 6, 1962.

3. Prior to July 6, 1962 the Claimant made no effort to have his leave extended, nor did he report for work on July 6, 1962.

4. Instead, around July 9, 1962, the Claimant's personal physician had released him for service, but since his Leave had been for illness (entailing an operation involving bladder removal) he was required, under Carrier rules, to be examined by a Carrier physician to determine his present physical condition. This was done on July 9, 1962. Also, under Carrier rules, specifically: Rules Governing the Determination of Physical Qualifications of Employees issued by the Surgical Department, bearing an effective date July 1, 1957, quoted on Page No. 1 in caps, is this requirement:

"ALL DETERMINATIONS AS TO PHYSICAL FITNESS ARE SUBJECT TO FINAL APPROVAL OF THE CHIEF SURGEON."

5. This Employee is covered by Carrier's rules and requirements. However, on July 10, 1962, prior to a determination of his physical qualifications by the Chief Surgeon as required by rules, the Claimant stated he would return to work July 16, 1962. Under the rules and requirements the Carrier could not and did not permit this, until the final approval for his return had been received from the Chief Surgeon, which was on July 23, 1962, after which the Claimant was immediately returned to work.

6. The progression of the claim for alleged time lost July 16, 17, 18, 19, 20 and 23, 1962 and the positions of the respective parties are exemplified by Carrier's Exhibit A (letter from the General Chairman to the Superintendent, dated October 11, 1962) and Carrier's Exhibit B (letter from Vice President-Personnel to the General Chairman, dated January 7, 1963).

(Exhibits not reproduced)

OPINION OF BOARD: Claimant had undergone major surgery, for which he had been granted a leave of absence. Prior to July 10, 1962 he was examined by his personal Doctor (Dr. Kavan) and a company Doctor (Dr.

Moody). Claimant was released to return to work by both Doctors, however Dr. Moody, company Doctor, made his finding subject to the approval of the Carrier's Chief Surgeon. On July 10, 1962, Claimant wired Carrier that he (Claimant) would return to work on July 16, 1962. When Claimant reported for duty on July 16, he was advised by Carrier's Supervisor that approval of Carrier's Chief Surgeon was required before Claimant would be allowed to return to work. Approval of the Chief Surgeon was obtained on the afternoon of July 23, 1962 and Claimant was allowed to return to work the following morning, July 24, 1962

The Organization first urges that this Claim should be sustained for the reason that Carrier did not give a reason for denying the claim in its final denial within 60 days as required by Article V of the August 21, 1954 Agreement, Sec. 1 (a) which is:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The Superintendent's denial of this claim while being handled on the property is contained in a letter as follows:

"CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

**Office of Division Superintendent
A. E. Anderson**

El Reno, Oklahoma
October 12, 1962
File—WA-3065 Signal

Mr. R. A. Watkins
General Chairman
Brotherhood of Railroad Signalmen
1414 Shuttee
El Reno, Oklahoma

Dear Sir:

Reference your letter October 11, File AV-266, about a claim of Mr. Bouteller.

Mr. Bouteller was returned to work on the day following the afternoon the Chief Surgeon advised us that it was OK to return him to work.

Your appeal is declined, as well as the claim in question.

I do not appreciate your referring to Mr. Bartholomew 'anyone

with a reasonable mind,' and in the future I will appreciate your keeping such comments out of correspondence.

Very truly yours,

/s/ A. E. Anderson
Superintendent"

Article V of the August 21, 1954 Agreement does not prescribe the words or language which must be used to give notice of the disallowance of a claim. (Awards 9615, 10368); nor does the denial require detailed or specific language (Awards 11208, 10416, 10368, 9835, 9615); nor is the reason even required to be valid (Award 12298).

In the instant case, Carrier alleges in its denial of the Claim that Claimant was returned to work on the day following the afternoon the Chief Surgeon advised it was OK for Claimant to return to work. In the next sentence; Carrier denied the appeal, as well as the Claim in question. Although the reason was terse and subtle to the point of being dangerous, the language of this denial can only be construed to mean that the Carrier felt that it had complied with the rules; that there was no violation of the agreement; and that therefore, the claim was denied. A sufficient reason is given if the Carrier merely denies a violation of the agreement (Award 11441). Therefore, this claim should be decided on its merits.

Claimant concedes that Carrier's Rules of Operation prevail when they do not conflict with the agreement between Organization and Carrier; that the agreement contains no provision, one way or the other, pertaining to approval by the Chief Surgeon for a disabled employee to return to work; and that Carrier does have the right to have the Chief Surgeon pass on physical qualification of its employees.

Therefore, the only question to be resolved in this instance is: Did the Carrier taken an unreasonable length of time (13 days) in obtaining approval of the Chief Surgeon for this Claimant to return to work after Claimant notified Carrier of his intention to return?

Claimant relies upon Award No. 12184 (Kane) to sustain his contention. In that award Claimant notified Carrier that he was physically able to return to work on January 9, 1958 and apprised Carrier of a favorable medical report from his personal physician. Carrier did not arrange for an examination of employee by its Chief Surgeon until March 16, 1958 and the employee was not returned to work until March 30, 1958. Award No. 12184 involved a time difference of some 79 days; this claim involves a time difference of 13 days.

In the instant proceeding, Claimant has obtained a leave of absence in order to have his bladder removed by surgery and an artificial bladder was attached, in some manner to the outside of his body. Claimant's duties required him to climb poles, remove and set motor cars off and on tracks, and other duties requiring careful and considered physical examination. Carrier had the right, obligation and duty to proceed with caution in allowing Claimant to return to work after such major surgery in order to protect fellow employees, the public and the Claimant himself.

In view of prior awards concerning this same issue, we are unable to find that the time consumed in allowing this Claimant to return to work was

arbitrary or unreasonable. Award 8535—Bailer, involved a delay of 14 days; Award 13523—O'Gallagher, involved a delay of 29 days; and Award 10907—Moore, involved a delay of 6 days.

Except insofar as it has limited itself by the agreement, all managerial prerogatives and rights remain with the Carrier (Award 12928). In the absence of a positive finding that the Carrier has abused its inherent right to manage its business, Carrier's determination of a policy standard cannot be disturbed. Not having found such an abuse, this claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That this Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1966.