

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20344
Docket Number CL-20369

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
PARTIES TO DISPUTE: (
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: **Claim** of the System **Committee** of the Brotherhood (GL-7384)
that:

(a) The Carrier violated the Clerks' Agreement when on or before December 6, 1971, it arbitrarily did not permit Clerk Robert W. **Reed** to return to the service of the Carrier, but instead held him out of **service** until February 18, 1972, before permitting him to return and perform compensated service.

(b) Clerk **Reed** be compensated for a day's pay for December 6, 1971, and for each and all subsequent dates he could have worked, at the proper rate of pay of Chief Clerk to the Yardmaster, Ney Yards, Fort Worth, Texas, had he not been **arbitrarily** withheld from service thereby depriving, him of the opportunity and right to work the said clerical position **from** December 6, 1971 until February 18, 1972.

OPINION OF BOARD: Claimant alleges that Carrier did not take steps, within a reasonable period of time, to restore him to duty after his personal physician certified that he was physically and mentally capable of doing so.

The Carrier has raised **a number** of **procedural** issues. **However**, the Board is of the view that the dispute can be disposed of on its merits and accordingly it is unnecessary to consider the procedural matters.

The record shows that Claimant was confined in a **Neuropsychiatric** Center and **Hospital** for a lengthy period of time following an **overdose** of **sleeping** pills in an apparent suicide **attempt**. He continued as an outpatient after release from the hospital.

Claimant's personal physician advised that he had been discharged as mentally competent on July 10, 1971 and stated that return to work would be "therapy" for Claimant. Carrier's Medical Director disapproved a return to work because of Claimant's **"abnormal** emotional status." The claim is not concerned directly with the July, 1971 **determination**, but the Board feels that it **serves** as background information.

In November, 1971 further information ~~was~~ forwarded by the Claimant's personal physician and it was asserted that **Claimant** was off of all medication and **completely** recovered. It was suggested that he return to work as soon as feasible.

It was not until January, 1972 ~~that Carrier's~~ Medical Director was of the opinion that Claimant had possibly recovered sufficiently **from** his emotional status so as to be restored to active service. Thus, he directed certain physical and mental **examinations. Claimant** was **examined** by a Psychologist and a Psychiatrist. Their reports were relayed to the Carrier and after additional physical examination, Claimant was advised that his return to service had been approved on February 18, 1972.

The Awards of this Board have concluded that the Carrier has the right to require an examination by **its Medical** Department prior to restoring an individual to duty, but the Carrier is required to **move** with **reasonable** speed after receipt of appropriate information suggesting a return to service. We have reviewed certain Awards which have indicated that periods of "five days", "**one** week", "ten days", etc. were reasonable under the circumstances. See, for example, Award 18234 (Dugan), 18797 (**Devine**), Second Division Award 6331 (**Williams**) and Second Division Award 6278 (McGovern).

While the Board does not in any **manner**, dispute the results of the cited Awards, nonetheless, we **are** compelled to note that each individual circumstance **must** be considered upon its own individual merits.

Claimant in **this** dispute had taken rather severe, potentially self destructive, steps and had been **subjected** to lengthy hospitalization with a diagnosis of schizophrenia. ~~lie~~ had been treated with psychotherapy, group therapy, individual therapy and drugs. **His improvement was gradual** (as stated by his personal physician) and when he was released from the hospital as **mentally competent**, he continued receiving therapy as an out-patient.

Clearly, a Carrier has **a** duty to itself, the employee, and to its other employees to assure that individuals **in** its active **employ** are both physically and **mentally** competent. While certain of the delays in this case would **appear, at first blush,** to be lengthier than required, upon a full consideration of the docket and the seriousness of the matter, we are unable to state **that the** Carrier did **not move** with **sufficient speed** **se as** to warrant a sustaining of the claim. Again, we point out that this Award is limited to the facts and **circumstances** of this particular case and is not, in any **manner**, a suggestion that the results reached in prior cited Awards were **improper**.

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 the **Agreement was** not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.