NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20674

THIRD DIVISION Docket Number CL-20577

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7475) that:

1. Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin, when it failed to permit employe Ivy M. Bolton to return to Carrier service from sick Leave of absence without first securing approval from a company physician, and held her'out of service from December 26, 1972 to January 5, 1973.

2. Carrier shall be required to compensate Ivy M. Bolton at the pro rata rate of Position 70150, Supervisor's Clerk, from December 26, 1972 to January 5, 1973, or nine (9) days' pay.

OPINION OF BOARD: Claimant, a clerk, sought and was granted a leave of absence, by Letter of July 14, 1972. In the Letter granting her the Leave due to illness the supervisor suggested that she arrange to see the Company doctor for approval of her re-entry upon the termination of the Leave. On October 9, 1972 Claimant wrote Carrier advising that she would be detained from work until further notice because of the continued problem with arthritis. The approval of the extension of her leave asked her to furnish Carrier's Chief Surgeon with information concerning her medical care, which she complied with. By Letter of December 16, 1972, Claimant advised Carrier as follows:

> "This is to inform you I will return from sick Leave to my assigned position of Supervisors' Clerks, Signals & Communications, Milwaukee, Wisconsin, at 8:00 A.M., Tuesday, December 26, 1972."

Carrier responded by letter of December 19, 1972 advising Claimant to secure a check-up by the Company Doctor before returning to work and setting ah appointment for December 28, 1972, claiming this was the earliest date available. Claimant was given a physical examination on December 28, 1972 and claims that she was told by the physician that she would know the results the next day. She received no information whatever until January 5, 1973 when she was advised by Carrier that she had been approved to return to work on January 8, 1973.

Petitioner's position is that the Agreement does not provide that an employee must submit to a physical examination under circumstances such as this and secondly, Carrier was dilatory in completing the examination and returning Claimant to work. It is argued that Carrier at very Least had *the* obligation to render the physical examination within a reasonable period of time and with the Least amount of inconvenience; Carrier's failure resulted in a significant wage loss to Claimant.

Carrier contends that in view of the seriousness of Claimant's disability it had the right to hold her out of service pending certification of her physical fitness to resume work. Carrier cites a series of Awards of this Division in support of this position. Carrier also claims that the period from December 26 to January 8 when Claimant returned to work was not unreasonable under the circumstances.

It is well settled by a host of prior awards that Carriers may hold employes out of service pending medical examinations if there are reasonably based questions concerning the physical fitness of the employes. This issue has been dealt with on this property, involving the same parties, in two prior situations: Awards 11492 and 14881. We certainly concur in that Carrier has the reserved right to require physical examinations (even when the contract is silent on the question) in circumstances when there is reasonable doubt concerning an employe's physical capacity or condition.

There remains the issue of whether the Carrier improperly delayed the completion of the physical examination thus causing Claimant to suffer an unnecessary Loss of earnings. Even though the Agreement called for only a thirty six hour notification of the desire to return to work after the leave of absence, it is noted that Claimant gave Carrier ten days notice; she also complied with all Carrier's prior directives with respect to medical reports concerning her condition. Under all the circumstances, including the fact that the examining physician's office was in the same building as Carrier's office, we do not view Carrier as being diligent in this matter. The period from December 26th to January 8th *in our* view was an excessive period of time to accomplish the medical review. It is therefore our considered conclusion that the Claim should be sustained to the extent of compensating Claimant for five days Lost time.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

A W A R D

Claim sustained to the extent that Claimant shall be compensated for five days Lost time.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Panka
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1975.