

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20911
Docket Number CL-20782

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
{ Clerks, Freight Handlers, Express and
(Station Employees
(
(Western Maryland Warehouse Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(667555) that:

1. Carrier violated the provisions of the Clerks' Agreement when it Improperly held R. M. Mortimer out of service and would not permit him to work after he had submitted a certificate from his personal physician indicating he was physically able to resume duty, and that,

2. R. M. Mortimer shall now be allowed one day of pay for the date6 of February 17, 18, 22, 23, 24 and 25, 1973.

OPINION OF BOARD: At the time this claim arose, Claimant was employed as a freight handler by Western Maryland Warehouse Company, a wholly owned subsidiary of Carrier. On February 5, 1973 Claimant was granted at his request two days of personal leave. On the evening of February 6, 1973 Claimant telephoned his supervisor that he was ill, he was under a physician's care and he would advise later when he was able to return to work. On February 7, 1973 Carrier's Chief Medical Officer mailed to Claimant a certificate of disablement to be completed before return to work. The record shows Claimant had a history of prior illnesses and sick leave during his 6 three year tenure with Carrier and, in late 1972 was absent on sick leave for three months with infectious mononucleosis.

Claimant alleges he never received the certificate of disablement and, on February 15, 1973 he telephoned his supervisor requesting an appointment with the Chief Medical Officer to approve his return to service. An appointment was arranged for Claimant on Friday, February 16, 1973 and he showed up without the completed certificate of disablement but rather with a note from his physician stating that Claimant was under care from February 5 - 16, 1973, inclusive, and was "advised to have complete bed rest because of medical complications." The Chief Medical Officer refused to accept this as sufficient to return Claimant to work and gave Claimant another Physician's Report for completion by Claimant's doctor prior to a carrier physical. Claimant protested and said he was ready to go to work that day. The Chief Medical Officer declined to discuss the matter further or to telephone Claimant's physician for a report.

On Tuesday, February 20, 1973 Claimant telephoned his supervisor who was out of the office on that date. The call VM returned on Wednesday, February 21, 1973 and Claimant advised that he had the completed Physician's Report from his doctor. An appointment was arranged for Claimant with the Chief Medical Officer on Monday, February 26, 1973 at which he presented the completed Physician's Report, underwent an examination and was approved for return to service on that day. Claimant resumed his duties as freight handler on February 27, 1973.

The Instant claim alleges that the Chief Medical Officer violated Claimant's contractual right by not returning him to service on February 16, 1973. In essence, the claim asserts that the Carrier acted arbitrarily, unreasonably and capriciously in not putting an employee who had recently recovered from infectious mononucleosis back to work without any evidence whatsoever that he was recovered from another illness. We find in this record no basis in the Agreement or in reason for sustaining such a claim. Nor can we say that the Chief Medical Officer arbitrarily or unreasonably delayed his approval of Claimant. Claimant indicated his readiness to present legitimate evidence of fitness on Wednesday, February 21, 1973 and he was given an appointment and returned to service two business days later on Monday, February 26, 1973. The claim is without merit and 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 Employee involved in this dispute are respectively Carrier and Employee 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1976.