

3426

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD** DIVISION

Award Number **21529**  
Docket Number **W-21463**

William G. **Caples**, Referee

PARTIES TO DISPUTE: ( **Brotherhood of Maintenance of Way Employees**  
( **The Texas and Pacific Railway Company**

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood that :

(1) **The** Carrier improperly and without just cause withheld **Trackman** L. C. Nesbitt from service for the period beginning on March 18, 1974 and extending through May 20, 1974 (System File **K-310-127**).

(2) The Carrier **shall** now allow **Trackman L. C. Nesbitt** eight hours of pay for each work day within the claim period described above.

OPINION OF BOARD: Claimant was on an authorized leave of absence because of personal injury from September of 1970 until the matter before the Board began March 11, 1974. On March 11, 1974, Claimant, who desired to return to work was examined by Carrier's physician at **Longview**, Texas, who "passed him for return to work." Subsequent to that examination Claimant was informed that it would take another "week or ten days to hear from the company physician in St. Louis and he would then be notified; or he could check with the **trainmaster's** office after that length of time." On March 27, 1974, Dr. E. T. Rouse, who it appears was the "company physician in St. Louis, approved Claimant return to work."

The record at this point becomes conflicting as to facts: **The** Carrier alleges **Claimant** returned to the Superintendent's office on March 28, 1974, and was then informed he had been approved to return to work and that he was to report to the **Roadmaster** at Mineola for assignment. The Claimant, denied he was in the Superintendent's office on March 28, 1974, and his representative states he has a signed statement **Claimant was in** a grocery store from 7 a.m. to 6 p.m. on March 28, 1974. Claimant did not report for assignment and next appears in the Superintendent's office at **Longview**, Texas, on May 15, 1974, after this claim had been initiated by his organization on May 13, 1974. Carrier asserts Claimant was asked "why he had not reported to the **Roadmaster's** office for assignment as instructed on March 28, 1974." Claimant, on May 15, 1974, was instructed to report to **Roadmaster** for work that day. Claimant reported for work on May 21, 1974.

The question which must be decided by this Board is whose negligence caused the delay in Claimant being placed on assignment, if in fact, there was a delay which could be deemed improper or without just cause?

The Carrier argues that that period from March 11 to March 28 was an entirely reasonable period for study and review of Claimant's record by Carrier's Chief Surgeon. That because of the heavy legal obligations of Carriers, this Board has consistently recognized that Carriers have a right and obligation to establish the physical fitness of employees before permitting them to return to service after absences due to illness or injury; that the Carrier is entitled to rely on the judgment of its Chief Surgeon in such matters and is entitled to a reasonable time for review of the employer's records by the Chief Surgeon. The Board is in accord with these general rules and will consider all time through March 28, 1974, a reasonable time for review of this case.

The question then becomes was any further delay justified and whose negligence caused the delay.

There is a basic disagreement of fact involved in this case. The Carrier alleges it gave certain instructions, the Claimant denies he received them; the Carrier alleges the Claimant was in a certain place on a certain day, the Claimant denies he was in that place on that day; conflicting and contradictory evidence.

There must be in the record presence of substantial evidence if this Board is to support a finding for one party against another. Here such evidence is lacking and we cannot sustain or deny this claim but will dismiss it.

**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

Award Number 21529  
Docket Number M-21463

Page 3

The Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A.W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.