

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21560
Dock Number **SG-21626**

David C. **Randles**, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(St. Louis-San Francisco Railway **Company**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad **Signalmen** on the St. **Louis-San Francisco** Railway Company:

On behalf of G. W. Lewis, **Signal** Maintainer, Cherokee Yard, for compensation for **time** lost, including **all** paid holidays, from January 1, 1975, until he was returned to service on April **12**, 1975, account **being withheld from** service without cause by Dr. **Hollo**.
[Carrier file: R-14153]

OPINION OF BOARD: There is no dispute that claimant G. W. Lewis suffered a heart attack in December 1973 following which **time** he was **under** the **care** of his **personal** physician who certified on **December 13, 1974**, that the claimant could return to work. Notwithstanding said certification, the Carrier's Chief Surgeon advised that the claimant should be placed upon medical leave and subsequently seek disability retirement. Claimant did request a leave of absence which was granted effective **December 19**, 1974.

On January 7, 1975, **claimant** entered a claim for straight time pay from January 1, 1975, because he **alleged** that he was **being improperly** withheld from the Carrier's service. In order to substantiate his **claim** and the certification of his **personal** physician, the **claimant** was examined by a cardiologist of his choice who "heartily" **recommended** his return to service. Subsequently, the claimant's personal physician wrote the Carrier's Chief Surgeon again recommending **claimant's** return to work. **Ultimately**, on March 5, 1975, the Carrier's Chief Surgeon recommended that the **claimant** be examined at a **medical** facility of the Carrier's choice. This **examination** produced a positive **recommendation** resulting in the **claimant's** return to work on April **12**, 1975.

It has been a consistent ruling of this Board that the Carrier has the right to require medical examinations by physicians of their choice. **Conversely**, the Board has held that a **prolonged** delay in processing a **claimant's** medical **examination** is a denial of his rights. The **claimant** was withheld from service for four **months: December 13, 1974** (the certification by his **personal** physician) to April **12**, 1975 (his return to work).

The **claim** of the Organization is a request for wages lost **from** January 1, 1975 - April **12**, 1975, during which time the Carrier reversed its-prior determination that the claimant should request disability retirement and, also, during which time the Carrier reviewed claimant's physical condition.

It **is the opinion** of the Board that claimant G. W. Lewis was restrained from returning to work for an excessive period of time given two separate medical evaluations (one **from** claimant's personal physician and another from a cardiologist) both **recommending** his return to service. These evaluations were received on December 19, 1974 and January 23, 1975, respectively.

As has been stated, this Board has previously held that a prolonged **delay** in processing a claimant's medical examination is **unnecessary** and a denial of his rights. There has been such a delay in this instant **matter**.

The **claimant** should be made whole for lost wages from March **12**, 1975 - April **12**, 1975.

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 violated.

A W A R D

The **claimant** should be made whole for lost wages as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of May 1977.