

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22586  
Docket Number CL-22616

John J. Mangan, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(Norfolk and Western Railway

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8595), that:

1. Carrier violated the Agreement between the parties when it caused Dispatcher A. E. Wood to suspend work and submit to **physical** examination and lose time from work on May 28, 29, **June** 1, 2, 3, **4**, 5, 8, **9**, **10**, **11**, **12**, 15, 16, **17**, 18 and 19, and 22, **1977**.

2. Carrier further violated the Agreement between the parties when they required Dispatcher A. E. Wood to use his private automobile to travel from Victoria, Virginia to Roanoke, Virginia on Tuesday, May 31, **1977**, to be examined by Dr. Joseph A. Ragione, Company Doctor, and then return to Victoria and they further required Claimant to use his private automobile to travel from Victoria, Virginia to Salem, Virginia and return on Wednesday, June 22, **1977**, to be examined by a Doctor **Clarkson**.

3. Carrier shall now be required to compensate Dispatcher A. E. **Wood** for eight (8) hours each date May 28, **29**, June 1, 2, 3, **4**, 5, 8, **9**, **10**, **11**, **12**, 15, 16, 17, 18, **19** and 22, **1977**, as a result of its unilateral action in requiring A. E. Wood to submit to a physical examination and lose time from work as a result thereof.

4. Carrier shall further be required to compensate Dispatcher A. E. Wood for use of his private automobile at the rate of **14¢** fourteen cents per mile for a total mileage of two hundred and thirty-one (231) round trip Victoria to Roanoke on Tuesday, May **31**, **1977**, and a total of two hundred and forty-one (241) miles on Wednesday, June 22, **1977**, for a grand total of four **hundred** and seventy-two (472) miles.

OPINION OF BOARD: The operative facts of this case are not really in **dispute**. Claimant, Mr. A. E. Wood, was employed as a Train Dispatcher at **Carrier's** Crewe, Virginia dispatching office. On this Carrier, in this territory, Train Dispatchers are represented by the Rrotherhood of Railway, Airline and Steamship Clerks.

On May 19, 1977, **claimant** marked off sick. He was treated by his personal physician who, on May 27, 1977, wrote:

"I treated Mr. Wood on May 19, 24th and 27th for a temporary illness. On 5-27-77 I felt that he had recovered and was ready to return to **full** activity.

Diagnosis: 1. Mild Depressive reaction  
2. Gastritis  
3. URI"

Claimant, on May 26, 1977, **attempted** to mark up on his **regular** position for May 28, 1977, whereupon he was advised that he would be required to be examined by Carrier's Medical Director in Roanoke, Virginia. Carrier offered to arrange the **examination** for May 27, 1977. **However**, at claimant's request, the examination was scheduled for May 31, 1977.

At the conclusion of the **examination** by Carrier's Medical Director on May 31, 1977, it was decided by Carrier that claimant should be given a psychiatric examination by an outside **physician** and an **appointment** was **arranged** for June 22, 1977. Upon **completion** of the examination on June 22nd, **claimant** was given a release to return to duty which he executed by protecting his assignment on June 23, 1977.

The claim before this Board seeks payment to Claimant Wood for the eighteen (18) work **days** beginning May 28, 1977 and concluding June 22, 1977. In addition, petitioner is asking this **Board** to award payment for the use of **claimant's** private automobile to travel **from** his **home** to the two (2) **examinations held on May 31 and June 22, 1977.**

There can be no question that **Carrier** has the right to determine the physical condition of its **employees** to perform their assigned duties. Neither is there any question to Carrier's right to have Mr. Wood **examined** by Carrier's **own** Medical **Examiner**. Nor is there any proper **challenge** permissible to Carrier's right to seek an outside opinion before **permitting** an **employee** to **return** to service in circumstances such as exist in this **case**. However, we are concerned with the amount of time which **was** consumed by **Carrier** in making their determinations. **There is no explanation in the record for the time period from May 31, 1977 to June 22, 1977.**

What was said in Third Division Award No. 14176 (Dolnick) is equally applicable here. **There we find:**

'What **constitutes undue** delay depends on the circumstances **in** each particular case. There **can be no** hard and fast **rule** fixing a specific **number** of days between receipt of notice of availability after an illness, and notice to report to the Carrier's physician for examination as reasonable or unreasonable."

In our **judgment** in this case based **on** the record before us, the delay from May **31st** to June **22nd** was excessive. **Claimant** was out of service twenty-six (26) calendar days (eighteen **(18)** work days). Ten **(10)** calendar days should have been sufficient time for **Carrier** to have **arranged** for the psychiatric evaluation. Therefore, we **will** award **claimant** straight time pay for all work **time** lost subsequent **to** June 10, 1977, and **deny** the remainder of the claim.

We have not been apprised of any contract provision which would allow **any** payment for the use of claimant's private **automobile** in situations of this type. Therefore, parts 2 **and 4** of the Statement of Claim are denied **in their** entirety.

**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 to the extent indicated in the Opinion.

A W A R D

Claim sustained to the extent indicated **in** the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, **Illinois**, this      30th      day of October 1979.