

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22647
Docket Number SG-22766

John J. Mangan, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad **Signalmen**
(Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

STATEMENT OF CLAIM: "Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

(a) **On** or about November 17, 1977, the carrier violated the current Signalmen's **Agreement**, especially rules 45, 82 and 83, when they would not allow Mr. **J. J.** Daily to return to work after his Leave of Absence expired,

(b) Carrier now be required to compensate Mr. Daily, for all lost wages from November 17, 1977 to the **time** Mr. Daily returns to his position of Signal Mtnr. at Trenton, MO.

(c) Carrier be required to compensate Mr. Daily, his expenses for travel, meals and lodging to obtain the physical exam that the carrier ordered.

(d) Carrier be required to pay all charges if any to the Doctor for the physical examination."

/General Chairman file: **AV-G-274**. Carrier file: **L-130-630**

OPINION OF BOARD: The **record** discloses that Mr. **J. J.** Daily, the Claimant herein, had been **examined** by Carrier doctors who diagnosed his condition as **diabetis mellitus** and hypertension. He was granted a leave of absence for physical disability from his work at Trenton, Missouri from August 24, 1977 to **November** 23, 1977.

On November 11, 1977, he gave notice that he would return to work on November 17, 1977 with a certificate from Dr. **Duffy**, one of the Carrier doctors, stating that he was fit for work.

When he reported for work on **November** 17, 1977, he was informed that, before he could start work, it would be necessary for him to be examined by Dr. Schechter, another Carrier doctor who had previously examined him. Se was thereafter examined by Dr. Schechter. The diagnoses of Doctors **Duffy** and Schechter were sent to the Chief Medical Officer of the Carrier in Chicago, Illinois.

Mr. Daily alleges that he was not permitted to return to work before December 27, 1977. Se, thereafter, filed a claim for wages lost from November 17th to December 27th of 1977, contending that there was an unreasonable delay on the part of the Carrier in processing the said **medical** reports. He also **claimed** bias by the Carrier against **him**.

The Claimant also cited Rules **82, .83** and 45 as the basis for his claim.

The Carrier responded by asserting **that** Rule 82 is concerned with examinations that may be required during the course of employment; that **Rule** 83 is concerned with personal injuries.

The Carrier also asserted that it had complied with Rule 45 when it granted the Claimant's request for an extension of his leave of absence.

The Carrier also stated that it had never exhibited any bias towards the Claimant and **none was** proven in the record.

The Carrier stated that the Agreement is **silent on the** matter of determining an **employee's** fitness to return to work following **a medical** leave of absence; that the determination **rests** solely with the Carrier.

There was no evidence adduced on the record to show that the Carrier violated the **rules** cited by the **Claimant** or that the Carrier was biased against the **Claimant**. Further, there is nothing in the record to show that the Company unreasonably or arbitrarily prolonged Claimant's return to service. (**Award** 14761).

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 **not** violated.

A W A R D

The Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

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