

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24397
Docket Number MW-24488

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Eastern Lines))

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

(1) Claimant Jose Rocha shall be reimbursed for all compensation loss suffered by him, including overtime pay, as a result of being improperly withheld from service October 6, 1980 to November 24, 1980 (System File MW-81-16)."

OPINION OF BOARD: Claimant, Jose Rocha, a Laborer Driver on Extra Gang 56, was withheld from service from October 6, 1980 to November 24, 1980, account his physical condition. On or about August 27, 1980, he was held out of service as a result of an examination performed by Carrier's chief medical officer. Claimant was directed to seek medical attention from his private doctor. He placed himself under his doctor's care and on October 6, 1980, he was declared fit for duty.

Claimant, however, did not make this information available to his Supervisors in Houston, but instead sent his records to the main office in San Francisco. This caused a delay in Carrier's being informed of Claimant's status and a delay in having him examined to determine his fitness by Carrier's chief medical officer.

Carrier received the medical report from Claimant's personal physician on October 27, 1980. On November 5, Carrier made arrangements to have Claimant examined on November 15, 1980, and November 18, 1980. Claimant was released for work by Carrier's doctor on November 18, 1980. His first day on the job was November 24, 1980.

Petitioner contends that Carrier should have allowed Claimant to return to work on October 6, 1980, when he was released by his personal physician. Carrier contends that Claimant delayed his return to work by sending his medical records to San Francisco, rather than giving them to the local Supervisor in Houston where he worked. Carrier also contends that its chief medical officer has a right to check Claimant's medical condition before allowing him to return to work and that this took some additional time.

A careful review of this record reveals that both parties to this dispute were responsible for some of the delay in getting Claimant back to work--Claimant, by sending his records to San Francisco and Carrier supervision, by taking a considerable amount of time setting up appointments for Claimant to be examined by Carrier's doctor and then delaying informing him of his release to return to work. Carrier could have easily reduced the time period for Claimant returning to work if it would have handled the paper work in an expeditious manner.

This Board **is** of the **opinion** that Claimant should not have **been** held out of service until **November 24, 1980**, and that Carrier could have, with **no** special treatment of the case, returned Claimant to the job by **November 17, 1980**. We, therefore, are sustaining **the** instant claim for five-days' compensation.

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 **Employes** involved **in** this dispute are respectively Carrier and **Employes** 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

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third Division**

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Ros-~~ie~~ **Brasch** - Administrative Assistant

Dated at Chicago, Illinois, this **26th** day of May **1983**.

