

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24.471
Docket Number MW-24277

George S. Roukis, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier improperly and without just and sufficient cause withheld J. C. **Ledesma** from service for the period **beginning** on May 12, 1980 and extending through **June 19, 1980** (Carrier's File 11-1500-60-5).

(2) **Claimant** J. C. **Ledesma** shall be reimbursed for all compensation loss suffered by him as a result of being withheld from service during the **claim** period described above."

OPINION OF BOARD: On March 10, 1980, Claimant **was placed** on a leave of absence **because** of a **motorcycle** accident he experienced on **March 8, 1980**. He returned to work on **April 21, 1980** and **worked until May 12, 1980** when he **was again placed on a leave of absence pending the results of a neurological examination** ordered by Carrier's Medical Director. The neurologist's report **was forwarded** to the Medical Director, by letter dated **June 4, 1980**, but **said report was not reviewed by this official until June 13, 1980**. Claimant **was returned to service on June 16, 1980**.

'In defense of his petition, Claimant contends that he was unreasonably withheld from service because of Carrier's procedural **requirements** which necessitated the Medical Director's approval. He asserts that the Medical Director's prolonged delay **in** processing his medical examination records denied him employment since he **was** examined by the Neurologist on May 13, 1980.

Carrier contends that it had the right to withhold him from service since **it** had a reasonable doubt about his physical condition. It avers that his fainting on February 25, 1980 and his motorcycle accident on March 8, 1980 warranted the neurological examination requested by its Medical Director. It argues that it promptly arranged for him to be examined at the Wichita Clinic after he was placed on a leave of absence on May 12, 1980 and asserts that the resulting delay, if any, was caused by the series of medical examinations **ordered** by the Neurologist and the receipt of the June 4, 1980 neurological report on June 13, 1980.

In our review of this case, we agree with **Claimant's** position. While Carrier is correct that it has the right and the obligation to insure that its **employees** are physically and mentally fit to perform assigned duties and the Board's decisional law on this point is emphatically supportive, we believe, in this **instance**, that **Claimant** was unreasonably delayed in returning to **work**. Specifically, we have no hard evidence when the Neurologist's report was in fact, received. The only notational marking on the first page of the June 4, 1980 report is the word, reviewed. not received, and thus, it is possible that.

the letter arrived earlier than June 13, 1980. Carrier's own admission in its Rebuttal **Submission** that it was "inexplicably not received in Dr. **Khuri's** office until June 13, 1980" raises a reasonable presumption that this was so, **Moreover**, we have no indication when the transmittal envelope was postmarked. A letter should not take **nine (9)** days to travel from Wichita, Kansas to Chicago, Illinois. At best, perhaps four **(4)** days. Since we cannot definitively conclude that the Neurologist's June **4, 1980** report was received by the **Medical** Director on June 13, 1980, we find that **Claimant** was unnecessarily delayed when he was returned to work on June 16, 1980. We do not find that he was delayed prior to June **4, 1980** or the reasonable time **it** would have taken for the June **4, 1980** report to reach the Medical Director. We will award him five (5) days back pay for this evident delay.

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

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*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **14th day of July 1983**.

