

NATIONAL RAILROAD ADJUSTMENT BOARD ~

THIRD DIVISION

Award Number 24677
Docket Number MW-24138

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(**The** Chesapeake and Ohio Railway Company

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

(1) Welder Virgil O. Kuhn was improperly withheld from service from January 29, 1980 to April 15, 1980 [System File **C-TC-897/MG-2703**].

(2) Welder Virgil O. Kuhn shall now be reimbursed for all wage loss suffered including **overtime** pay, from January 29, 1980 to April 15, 1980.

OPINION OF BOARD: Claimant herein had been injured while on duty in 1976.

Subsequently Carrier paid for his medical care and medicines. He returned to service as a welder. On January 29, 1980 Claimant was instructed by his Supervisor to start doing more boutet welding which also involved getting motor car line-ups. Claimant asked his supervisor to get someone else to get the line-ups since he had experienced difficulty in this work in the past and the medication he was taking made #at work unsafe. The Supervisor, after checking with appropriate **Carrier** officials, notified Claimant that he was removing him from service until it could be determined what medication he was taking and its effects. Specifically, Claimant was notified on January 29, 1980:

*January 29, 1980

File: #270518

Mr. Virgil O. Kuhn:

This is to inform you that you are being removed **from** service, effective at once, until you furnish the Railway **Company** a statement from your personal physician outlining the medication he has prescribed for you, the amount to be taken, the effects it would have upon **you**, and the **review** of this information by our Medical Department.

Yours truly,

/s/ R.F. Silbaugh

R.F. Silbaugh
Manager **Engineering**

GCL/rm

cc: Dr. D.J. Foglia*

Claimant did not secure any medical information and on February 22, 1980, Carrier's Regional Medical Examiner **wrote** to Claimant's personal physician requesting the required information. Claimant's physician **responded** by letter dated March 28, 1980 which was received by the Regional Medical Examiner April 2nd. By letter dated April 3rd, Carrier's Manager Engineering was notified he could release Claimant for work. Claimant was restored to service on April 15, 1980. It is also of record that Claimant was pursuing a substantial suit against Carrier for damages caused by the 1976 injury.

Petitioner argues that Claimant was improperly withheld from service during the period from January 29, 1980 until April 15, 1980. First it is argued that Claimant never attributed his need for assistance in securing line-ups to **his** medical problems. Further Petitioner argues that the period of **time** elapsing was totally unreasonable in terms of the information requested **and** the history of the case.

Carrier maintains that **there** was no discipline involved in this dispute, as originally argued by the Organization. Further, Carrier insists that it was perfectly proper to **withhold** Claimant from service until the medical facts could be determined. Finally Carrier asserts that the delay in securing the information was attributable primarily to Claimant and his physician.

From the record of this dispute, it is the Board's view that Claimant did indeed notify his Supervisor of problems referring to his medication as the reason for the problem in securing line-ups. It is evident, therefore, that this matter was not a disciplinary **action** requiring conformity to Rule 21. It is well established that Carrier has a fundamental right to **withhold** employees from service until proper determination can be made as whether such employees can safely perform their duties. Such was the **circumstances** herein. The only remaining problem to examine is whether or not there **was** improper delay in bringing the investigation to a conclusion.

From the record it **is** apparent that Claimant did not secure the information requested by Carrier's letter to him dated January 29, 1980. The Medical **Examiner** took appropriate action a month later to secure the data required and Claimant's **physician** was extremely slow in responding (March 28, 1980). **However**, no reasonable basis can be found for waiting until April 15, 1980 to **restore** Claimant to duty. That period was clearly too long **and** unnecessary. **For** that reason we shall require Carrier to compensate Claimant for one **week's** pay due to that 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:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984