

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24715

Docket Number CL-24759

Robert Silagi, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight **Handlers**, Express and Station **Employees**
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Chicago Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9632) that:

(1) Carrier violated the Clerk-Telegrapher Agreement when, effective **December 6, 1977**, it held Utility Clerk Robert **Carlson**, Chicago, Illinois, from work for nineteen (19) work-days after he received a formal return-to-service approval by Carrier Medical Examiner following a Carrier-ordered physical examination, and

(2) Because of such unjustifiable delay in returning Mr. **Carlson** to Carrier's service, Carrier shall be required to compensate Claimant Robert **Carlson** eight (8) hours' pay on each of five (5) days' per week, **December 6, 1977** through January 2, 1978, a total of nineteen (19) work-dates.

OPINION OF BOARD: This dispute concerns time limits imposed upon a Carrier when an **employee** returns from a disability absence after a **medical** examination which certifies him fit for work.

Claimant was injured in an automobile accident causing him to be absent from duty beginning April 4, 1977. As of November 27th he had still not resumed duty. Carrier requested that he return to **work** and, as a condition precedent, submit to a physical examination. Claimant was examined on **December 5th** at the Clearing Industrial Clinic in Chicago. The examining physician gave Claimant a certificate marked "accepted for return to **work**". Claimant presented the authorization to a Carrier Supervisor who advised **Claimant** that he **would** be back to **work** within 3 to 5 days. The medical records of Claimant were then sent to Carrier's Chief Medical Officer in Baltimore for evaluation. The Medical officer subsequently advised that Claimant could resume his duties on January 3, 1978, which he did.

The Brotherhood contends that the 19 day **delay** in returning Claimant to work violated Rules 3, 14 and 47. Rule 3 establishes a 40 hour 5 day week. Rule 14 generally prohibits reduction of the work week below 5 days. Rule 47 outlines the procedure followed in grievances involving discipline. The basic argument of the Brotherhood is that the delay was unreasonable and that it is Carrier's burden to prove that it had reasonable cause for such delay by a preponderance of material and relevant evidence.

The Brotherhood recognizes the right of the Carrier to have **an employee** returning from a disability absence submit to a physical examination and subsequent clearance. The Brotherhood maintains, however, that the return-to-work authorization must be given expeditiously so as to avoid loss of time. The Brotherhood complains that Carrier did not act with any degree of dispatch.

Carrier contends that it did act expeditiously. Carrier points to the nature of Claimant's injuries, i.e., serious chest and internal injuries and to the lengthy duration of Claimant's absence as justification for a thorough evaluation of Claimant's medical records by its Chief Medical Officer.

It is well settled that Carriers may hold employees out of service pending medical examinations if there are reasonably based questions concerning the physical fitness of the **employee**. **"We** certainly concur in that Carrier has the reserved right to require physical examinations (even when the contract is silent on the question) in circumstances when there is reasonable doubt concerning an **employee's** physical capacity or condition." (Award 20674 - **Liberman**).

The undisputed facts show that Carrier ordered Claimant to be examined at Clearing Industrial Clinic in Chicago. Carrier contends that the clinic is an independent organization not a part of its medical service and that it utilizes the services **of such** a clinic merely as a convenience to its employees. Carrier further contends that the 3 week interval between the medical examination and the evaluation was a **"normal"** period to secure the records, contact doctors and assess possible future problems.

The Board recognizes that it is not feasible to have branches of Carrier's medical service spread throughout its extensive geographical system. In those circumstances Carrier must, perforce, rely upon local physicians to perform examinations. The Chicago Terminal Division Timetable lists, under the heading **"Medical Department"**, a number of physicians and clinics serving employees in the Chicago area. Among them appears the Clearing Industrial Clinic. It would appear, therefore, that such clinic acts as Carrier's agent and that Claimant had a right to assume so. The examining physician at the clinic gave Claimant an unqualified authorization to return to work. The Assistant Manager, Terminal Services, to whom Claimant delivered the authorization, advised him that he would be back to work within 5 days. The record does not disclose that either the examining physician or the Assistant Manager, or any other Carrier official, indicated to Claimant that his return to **duty** was contingent upon approval by Carrier's Chief Medical Officer. In the absence of such cautionary language Claimant had a right to assume that he would be back on duty within 5 days from the date of his examination.

Under these circumstances depriving Claimant of the opportunity to work for three (3) weeks was unjust.

Accordingly, Carrier shall reimburse Claimant for loss of wages for the fourteen (14) working days immediately preceding January 3, 1978,

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 9th day of March, 1984