

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24856
Docket Number MW-25070

John E. Cloney, Referee

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

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

(1) The Carrier improperly withheld Trackman L. Pacheco from service for the period beginning on September 28, 1981 and extending through October 11, 1981 (System File 160-40026-8111/11-1500-20-16).

(2) The Carrier shall now allow Trackman L. Pacheco eight (8) hours of pay for each work day within the claim period described above.

OPINION OF BOARD: As a result of an off duty injury to his right ankle on August 25, 1981 claimant was placed on leave of absence. By letter dated September 16, 1981, the carrier notified claimant he should have Form 2830 SPL completed by his physician "at least one week" before his return to work. The form was enclosed. The completed form was received by the Carrier on September 28, 1981. It had been signed by the attending physician on September 24 and by claimant on September 25, 1981. It released claimant to return to work on September 28. It was then sent to the Division Superintendent's office and from there to Dr. R. K. Khuri, the Carrier's Medical Director in Chicago. Dr. Khuri recommended claimant be allowed to return to service and on October 12, 1981 claimant returned.

Claimant contends the Carrier violated the Agreement by failing to return him to duty in a timely fashion after receipt of the completed Form 2820 SPL.

The Carrier contends the time lapse was simply "the normal time required to process the form and review and evaluate records pertaining to grievant's off duty injury" and points to its well recognized right to have its Medical Director conduct such review.

While we agree the Carrier had the right to review and evaluate the medical evidence prior to returning claimant to duty we believe there was an unreasonable delay here and as a result claimant was held out of service for ten working days while the review could reasonably have been accomplished in one half that time. We will sustain the claim and award claimant five (5) days back pay.

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 is sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984