

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27116
Docket No. MW-26559
88-3-85-3-294

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

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:

Machine Operator B. J. Tatro shall be compensated for all compensation loss suffered by him (624 hours) as a result of being improperly withheld from service beginning May 30, 1984 (System File MW-84-81/418-87-A)."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant is regularly employed by the Carrier as a machine operator on the San Antonio Division. On May 17, 1984, the Claimant suffered a loss of consciousness episode while on duty which culminated in his admission to a hospital at Taft, Texas. The Claimant was withheld from service and at the Carrier's request the Claimant was examined by a neurologist on May 21, 1984. Dr. Carroll's report indicated an "impression" of a "single grand mal seizure" and recommended a number of tests. On May 31, 1984, Dr. Carroll wrote the following letter to the Claimant's District Manager:

"Mr. Tatro asked that I write you concerning the results of his medical tests. As you know, he suffered a loss of consciousness episode two weeks ago. Since then, he has had no further difficulty. Lab work and C.T. scan of the head showed no abnormalities. An electroencephalogram (brain wave test) was completely normal

and did not show any epileptic type activity. At the present time, I am calling this loss of consciousness episode, etiology undetermined, and have recommended that Mr. Tatro not be treated unless he had further difficulty. If he should have further difficulty, he will contact me immediately and be re-evaluated.

If I can be of further assistance, please let me know."

Apparently nothing occurred further until June 26, 1984, when the instant claim was filed. On July 17, 1984, the Carrier responded to the claim as follows:

"Reference your letter of June 26, 1984, wherein you are presenting claim on behalf of San Antonio Division Machine Operator B. J. Tatro for 160 hours at his straight time rate of pay on a continuing basis account not allowed to return to work.

Our Medical Department advises arrangements have been made to have Mr. Tatro examined by a neuro-surgeon. Upon receipt of report from the examining doctor, our Medical Department will make judgement as to when Mr. Tatro will be allowed to return to duty.

Safety is of the first importance in the discharge of duty. It is the Medical Department's main concern to insure that an employee is fully capable, both physically and mentally, of performing his duties so as not to endanger his safety or the safety of others. It is the Carrier's prerogative to request that Mr. Tatro be examined by a neuro-surgeon to rule out the possibility of a recurrence.

It is my opinion that the Carrier has not in any way violated Articles 2, 6, or 8. Therefore, your claim is without basis and it is respectfully declined."

The record indicates that the Carrier's Medical Department contacted Dr. Samuel Neeley on July 23, 1984, asking him to see and evaluate the Claimant. In the meantime, the claim was being progressed.

On August 7, 1984, the Carrier Medical Department contacted Dr. Carroll, evidently asking that he review the Claimant's duties and make a recommendation regarding his ability to perform his regular duties. Dr. Carroll responded as follows:

"Regarding your August 7, 1984 letter on Mr. Bryan Tatro, I am sorry that I will be unable to fulfill your request. Basically, I feel that reviewing the duties of a roadway machine operator and making statements concerning job restrictions would be more appropriately handled by a company physician or a physician contracted by the company. I would suggest that Mr. Tatro be sent to a second neurologist with that specific purpose. In addition, he may want to go further in testing, such as a 24-hour ambulatory EEG recording which would have a better chance of discovering a cerebral dysrhythmia than the routine EEG which was normal.

Again, I am sorry I cannot be of more help to you."

Next, an appointment was made for the Claimant to see a physician in Tucson on August 24, 1984, where it was believed the Claimant resided. However, there was some difficulty in locating the Claimant. It was ultimately determined that he lived in Beeville, Texas, but had no phone. Next, an appointment was made for the Claimant in Texas and he was examined by Dr. Neeley on August 28, 1984.

The Carrier received Dr. Neeley's report on September 12, 1984. It was his conclusion the episode of unconsciousness was due to dehydration and syncope, notably no epileptic or etiology of undetermined nature was diagnosed. The Claimant was then approved to return to service on September 17, 1984.

The record well documents the arguments of the parties. In response, the Board agrees that the Carrier is privileged to withhold the Claimant from service when there is evidence of epileptic activity of undetermined etiology. Its policy of withholding employees who operate equipment from service under such circumstances is not unreasonable. It was also its right to seek additional evaluations beyond Dr. Carroll's. In fact, Dr. Carroll recommended as much.

The problem here is the delay involved in getting all this accomplished. While the Company has the right to withhold an employee from service under these circumstances for the purposes of further examination, it must proceed with due diligence and without unreasonable delay.

What constitutes unreasonable delay varies from case to case depending on the circumstances. For instance, some of the delay here was because the Claimant was difficult to locate. Moreover it must be recognized that doctors, particularly specialists, are often busy. Appointments can be difficult to obtain; reports can be delayed.

The Board has little difficulty in accepting the delay up to Dr. Carroll's examination or the delay after Dr. Neeley was contacted on July 23, 1984. However, the record indicates that virtually nothing was done between May 31 and July 23, 1984. While the Carrier had the right to request further evaluation by a different specialist after May 31, 1984, it plainly was obligated to move forth expeditiously. Waiting until July 23, 1984, to start this process does not constitute due diligence.

Accordingly, the Claimant is entitled to lost wages between May 31 and July 23, 1984.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.