

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Portland Terminal Railroad Company

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

(1) The Agreement was violated when Claimant D. O. Taylor was improperly withheld from service December 30, 1985 through February 9, 1986 (File BMWE 601).

(2) Because of the aforesaid violation, the claimant shall be compensated for all wage loss suffered including overtime and holiday pay for New Year's Eve (December 31, 1985) and New Year's Day (January 1, 1986)."

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.

On December 16, 1985, Claimant called the Carrier to mark off because he was being hospitalized. Later in the day, a hospital employee notified the Carrier that Claimant had been admitted to the hospital's detoxification unit for treatment of a chemical dependency and the hospital expected to release Claimant on or about December 31, 1985. The hospital released Claimant on December 29 and the next day, Claimant appeared at work. The Carrier referred Claimant to the Union Pacific Employee Assistance Program for an evaluation of Claimant's fitness to resume his section duties. The Carrier approved Claimant to return to service on February 7, 1986.

The record is unclear concerning Claimant's activities between December 30, 1985, and February 7, 1986. The Carrier represented to the Board that Claimant was participating in the Employee Assistance Program and being evaluated by an Employee Assistance Counselor.

While the Carrier emphatically denies that it granted Claimant a medical leave of absence, the record nonetheless reflects that Carrier treated Claimant as if he had been given an extended medical leave of absence. Therefore, the question becomes whether or not the Carrier was under an obligation to return Claimant to work within a reasonable time after his discharge from the hospital.

This Board is faced with a dilemma. We do not want to undermine the confidentiality maintained for employees undergoing treatment for chemical and alcohol abuse. The unnecessary public exposure of private facts would deter workers from seeking help for their drug or alcohol problems. On the other hand, this Board cannot condone any Carrier delay in evaluating an employee's fitness for service after his own physician or a hospital has released him to return to work. In the usual case, the Carrier has a reasonable time, five to ten days, to determine if an employee is physically able to resume his railroad duties.

This dilemma must be resolved on a case by case basis. While the record herein does not reveal what treatment, if any, Claimant was undergoing during the 42 days after he first attempted to return to service, we find that the Carrier reasonably required Claimant to obtain a confidential evaluation of his fitness for service. Also, the record does not reflect if Claimant submitted any medical information to the Carrier when he reported to service. Absent such information, the Carrier would be forced to have Claimant undergo an extensive physical evaluation. Therefore, we do not find that 42 days was an unreasonable period of time for the Carrier to evaluate Claimant's condition, administer confidential treatment and determine his potential for rehabilitation. In this case keeping Claimant out of service was equivalent to extending his de facto medical leave of absence.

This Board emphasizes, however, that it will not tolerate delays in evaluating employees' fitness for service. Carriers remain under an obligation to promptly permit employees, returning from a medical absence, to resume work.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1990.