

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Agreement when it improperly withheld B&B employe H. D. Henderson from service beginning on September 23, 1987 (System File MW-88-13-CB/467-6-A).

(2) As a consequence of the violation referred to within Part (1) hereof, the Claimant shall be allowed all wage loss suffered beginning on September 23, 1987 and continuing until he was returned to service."

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 "blacked out" while painting and fell eight feet from a ladder on August 18, 1987, and thereafter had no memory of the event. Within the next few weeks Claimant again experienced another episode. On September 17, 1987, Claimant was medically evaluated and the physical examination was unclear as to the cause, but suggested cardiac disease. On that same date Claimant underwent a twenty-four hour Holter Scan. Based upon the physician's recommendation, the Carrier withheld Claimant from service on September 23, 1987.

The facts in evidence indicate that on October 7, 1987, Claimant underwent a Cardiovascular Stress Evaluation at a regional medical center with no negative findings. On November 3, 1987, Claimant was subjected to an Electroencephalogram with a normal outcome. By letter dated November 13, 1987, the Carrier was advised that there was "no clear explanation for why [Claimant] passed out at work." The physician indicated that Claimant was able to work. Claimant was returned to work on November 19, 1987.

The Organization argues that the Carrier was "extremely slow" in returning Claimant to his position as Bridgeman. The Organization filed the instant Claim on November 13, 1987, requesting pay for all lost time from September 23, 1987, until returned to service. The Carrier denies that its Chief Medical Officer failed to expeditiously schedule examinations or that its actions were unreasonable.

As a preliminary point, this Board was unable to read Employee's Exhibit A-4 and Carrier's Exhibit A, pages 9 and 10. If the parties wish the Board to consider material, it is essential that the exhibits be legible (Third Division Award 25420). Those exhibits were not utilized in this decision.

As to the usable record, we conclude that the Carrier did not act expeditiously. The Board does not fault the Carrier for its concern about the physical capability of the Claimant to safely perform his duties. However, we find nothing in this record to indicate evidence on the Carrier's part that it attempted to move the process along. The Organization argues that the Carrier "did not expeditiously schedule the Claimant's examinations." There is no Carrier rebuttal or an explanation for the delay.

Our review finds that in these particular circumstances, the Carrier acted inappropriately. As to the remedy, we find that one month should have provided sufficient time for a complete evaluation. The Claimant is to be paid for all time lost from October 23, 1987, until he was returned to service on November 19, 1987.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.