Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 28798
THIRD DIVISION Docket No. MW-27488
91-3-86-3-740

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

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 P. B. Martinez from service for the period beginning September 16, 1985 and extending through November 11, 1985 (System File 160-22-855/11-1500-20-21).

(2) The Carrier shall now compensate Trackman P. B. Martinez for all wage loss suffered during the claim period described in Part (1) hereof."

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 employed as a Trackman on the Carrier's New Mexico Division. On or about June 11, 1985, Claimant requested a leave of absence from the Carrier for medical reasons. Claimant supplied the Carrier with a letter dated June 12, 1985, signed by Dr. Jack A. Herrmann, M.D., P.A., a surgeon, which stated as follows:

> "Mr. Martinez is having increasing left chest pain involving the muscle wall and shoulder, in an area where he had surgery approximately seven years ago. It is the result of a work induced injury.
>
> He works as a laborer which continually aggravates this painful area and I have given him a non-steroidal anti-inflammatory drug to use and have asked him to stay off work for three months, to let his shoulder improve."

The Carrier granted Claimant the leave. June 10, 1985, was the last day he worked before going on leave.

About three months later, on September 11, 1985, the Carrier received a copy of its Form 2820-Spl., which is captioned "Certification from Employee's Attending Physician and Statement of Employe," which had been filled out with certain information pertaining to Claimant. The Form was signed by a Dr. Alan Zelicoff and indicated that Claimant was fit to return to work as of September 16, 1985. The Form indicated that Claimant was taking medication but stated that the medication would not compromise his health or safety or require any work restrictions.

Because the Form 2820-Spl. had not been completed or signed by Dr. Herrmann, who in the June letter had described himself as Claimant's attending physician, and had requested that Claimant be given the time off in the first place, the Carrier on September 26, 1985, sent Claimant another Form 2820-Spl. to be completed and returned by Dr. Herrmann.

On October 16, 1985, the Carrier received the form from Dr. Herrmann. It indicated that Claimant was fit to return to work, but included no entry in the section which asks about the employee's medications. The Carrier returned the form to Dr. Herrmann, requesting that he complete that section. The Carrier received the completed form from Dr. Herrmann on November 5, 1985. That statement, like the earlier one submitted by Dr. Zelicoff, indicated that Claimant was taking certain medication. Unlike Dr. Zelicoff, however, Dr. Herrmann stated that the medication should require certain work restrictions.

The Carrier forwarded Dr. Herrmann's fully completed form to its General Manager's office in Amarillo, Texas, for evaluation. On November 8, 1985, the General Manager approved Claimant's return to work. Claimant was so notified by the Carrier on November 11, 1985. He returned to duty on November 12, 1985.

The Organization asserts that the Carrier unreasonably held Claimant out of service from September 16, 1985, the date on which Dr. Zelicoff originally indicated he could return to work, to November 11, 1985, when he was eventually cleared to return by the Carrier. The Organization accordingly demands that Claimant be compensated for all wages he lost during that interim. The Carrier argues that it acted reasonably and therefore should not be liable to Claimant for any backpay.

The Organization relies on abundant precedent from this Board and others holding that, although a Carrier has every legitimate right to satisfy itself that an employee who has been disabled is physically fit to return to his responsibilities, a Carrier may not impose unreasonable delay or expense upon an employee in the process of doing so. E.g., Third Division Awards 23260, 20419, 20344, and 18797. Those Awards hold that, in such circumstances, the Carrier must conduct its medical evaluation of the employee within a "reasonable time" or with "reasonable speed." In Award 20419 the Board stated that a Carrier has:

> "The obligation to proceed in a diligent manner with the medical investigation so as not to jeopardize an employe's right to return to work or to unduly hold an employe out of service for administrative reasons."

The Board in Award 20344 explained that "the Carrier is required to move with reasonable speed after receipt of appropriate information suggesting a return to service," but "each individual circumstance must be considered upon its own individual merits."

The Carrier does not dispute the principles laid down in prior cases. The Carrier contends that it complied with them. The Carrier asserts that it proceeded diligently in verifying Claimant's medical condition, and that the delay in returning Claimant to work was not unreasonable under the circumstances. According to the Carrier, the delay resulted primarily from two factors which were beyond its control and which, if anything, were Claimant's responsibility. Those factors were: (1) Dr. Herrmann, who identified himself as Claimant's attending physician when Claimant requested the medical leave, was not the one to submit the original Form 2820-Spl. on September 11, 1985; and (2) when Dr. Herrmann eventually did submit a Form 2820-Spl. on October 16, 1985, it was materially incomplete.

The Carrier's position is well taken in the circumstances of this Claim. It is clearly reflected on the face of the Form 2820-Spl. that the form is to be completed by the employee's attending physician. The medical documentation that Claimant submitted to the Carrier when Claimant went on leave in June was signed by Dr. Herrmann and identified Dr. Herrmann as his attending physician. It is not unreasonable for the Carrier to have sought a statement from the same physician when Claimant indicated he was ready to return to work. This is not to say that Claimant could not substitute physicians for good reason during his leave. However, when the Carrier requested that Claimant submit a Form 2820-Spl. from Dr. Herrmann, Claimant did not object or indicate that Dr. Herrmann was no longer his doctor or no longer familiar with Claimant's case. Consequently, the Carrier was not unreasonable in requesting Dr. Herrmann's statement and in waiting to receive it.

Nor was the Carrier unreasonable in requesting that Dr. Herrmann complete the entire form. The Form 2820-Spl. originally submitted by Dr. Herrmann omitted any information as to whether Claimant was on medication which might affect his performance. The statement which Dr. Zelicoff had earlier submitted indicated that Claimant was on some medication. Indeed, when the fully-completed form finally arrived from Dr. Herrmann, it showed that Claimant was taking medication which, in Dr. Herrmann's opinion, warranted certain restrictions on his activities.

The Carrier acted reasonably and without undue delay on its part in reviewing and processing the information it received in this case. As the Board said in Award 20344, quoted above, "the Carrier is required to move with reasonable speed after receipt of appropriate information suggesting a return to service." In previous Awards where the Board has found certain delays to be excessive, the circumstances have been different and the delays were attributable to inefficiency on the part of the Carrier. For example, in Third Division Award 26056, it was deemed unreasonable for the Carrier to have held

an employee out of service for a month awaiting medical evaluation, after the employee already had passed a return-to-duty physical and worked without incident for almost two weeks. In Third Division Award 27116, a delay of seven weeks was deemed excessive when, during that interval, virtually nothing was being done to ascertain the employee's physical fitness.

Here, the Carrier merely sought "appropriate information" about Claimant's condition from Claimant's attending physician. Claimant did not protest the Carrier's request for that information. Furthermore, the Carrier acted promptly once it had obtained it. The delay was not the Carrier's fault. It is attributable to external matters, namely, obtaining a report from the doctor who was caring for Claimant, and then securing completion of that report. Therefore, the Claim must be denied.

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 15th day of May 1991.