

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30816
Docket No. SG-28646
95-3-88-3-501

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The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Chesapeake
& Ohio Railway Company - Pere Marquette
(District)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (C&O):

- (a) Carrier violated the parties' Schedule Signal Agreement, particularly principle of Seniority Rule 401 and Force Reduction Rule 407 (h) and (i), when it failed to authorize Claimant's return to service on or before July 1, 1987 following furlough and return-to-service physical examination given on June 17, 1987.
- (b) Carrier should now be required to compensate Kelly H. Kirkman, C&O ID No. 2624578, at his applicable straight time rate of pay of Signalman of \$13.82 per hour beginning Wednesday, July 1 through Monday, August 3 (civic holiday) 1987, for a total of 24 days at 8 hours per day, or a total of \$2,653.44 in order to make him whole for all wages and benefits lost, including credit for vacation."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 relevant facts are not in dispute. The Agreement was violated.

Claimant was on furloughed status when Carrier issued Bulletin No. C-2-87 on May 26, 1987 advertising a Signalman's position on Force 7P47. Claimant bid on and was awarded the position in accordance with an Addendum to Bulletin No C-2-87 dated June 15, 1987. The Addendum listed an effective date of July 1, 1987 for this position.

Claimant was contacted by Carrier on June 9, 1987 and advised to arrange to take a return-to-work physical examination prior to reporting to his gang position. Instead of submitting to the physical examination arranged by the Carrier on June 24, Claimant arranged to have his physical on June 17, at the Carruthers Clinic in Sarnia, Ontario, which is an approved CSXT medical examining point. After completing his exam, Claimant faxed the physician's report to the Chief Medical Officer in Jacksonville, Florida.

On July 1, 1987, the date scheduled for Claimant's position to begin, Claimant contacted the Division Engineer's office and was advised that the results of his examination had not yet been approved and that he would not be allowed to return to work until such approval was received.

On July 6, 1987, Claimant was contacted by the Carruthers Clinic and informed that the initial examination was not complete since a drug screen was not included. Rather than go back to Sarnia, Claimant arranged to have the necessary test sample collected on July 10, at a facility closer to his home in Detroit.

Claimant made no further inquiries until Friday, July 31, 1987, when he contacted the Carrier's Chief Medical Officer and was told that the results of his drug and alcohol screening had not yet been received. After some checking, Carrier found that the test results had been sent to North Carolina. Shortly thereafter that same day, Claimant was advised that he was approved for return to service. He received instructions to report for duty on Tuesday, August 4, 1987 since Monday, August 3 was being observed as the Canadian Civic Holiday.

The Organization contends that the record demonstrates that Claimant made himself available and was examined at a Carrier approved medical facility on June 17, 1987. The results of the examination were faxed to the Carrier's Chief Medical Officer that same day. It is clear to the Organization that the Carrier had an obligation at that point to proceed with the approval process in a diligent manner and that Carrier failed to respond to the examination results within a reasonable time. Not only did Carrier delay initially in advising Claimant that his examination was not complete because he did not have the requisite drug testing, but Carrier then compounded the problem by failing to promptly process the sample that was submitted by Claimant for the drug screen.

The Organization maintains that Carrier's obligation to diligently process the results of physical examinations is well established. In several Third Division cases, the Board has held that while Carrier has the right to require employees to submit to a physical examination prior to return to service, there is a corresponding obligation on the part of Carrier to proceed in a diligent manner with the medical investigation so as not to unduly hold the employee out of service for administrative reasons. Generally, it has been held that five days is a reasonable time to decide whether the employee can return to work. See, Third Division Awards 21560, 19484, 20419, 2948; and Second Division Award 8733. In the instant case, the Organization urges Carrier lacked any justifiable basis for delaying approval of Claimant's return to service, and Carrier should now be required to compensate Claimant in accordance with the time he would have worked if he had been returned to service on July 1, 1987.

The Carrier argues that there is no Rule support for this claim. It asserts that there is no evidence of any undue delay attributable to the Carrier; to the contrary, Carrier's Chief Medical Officer acted immediately when medical information was available on which to render a decision. Absent evidence of any dilatory action on the Carrier's part in handling the Claimant's return from furlough, the claim should be denied.

After careful review of the record in its entirety, we note that the Agreement does not specify how long Carrier may take to return an employee to duty under circumstances such as those before us. There appears to be no dispute, however, based on the precedent Awards on this subject, that Carrier has a reasonable time to conduct its own examination of an employee returning from furlough, and thus the question in this case is whether a reasonable time did elapse before Claimant was approved for return from furlough.

As we view the record, Carrier may have been somewhat dilatory in its actions. However, Claimant had an interest in protecting his contractual rights and making known the existence of his status. He permitted several weeks to elapse before checking on the results of his drug screen and, therefore, at least some of the delay can be attributed to Claimant's inactions as well as the apparent mix-up in the location where the results were sent. In addition, Claimant took his return-to-work physical in Canada rather than at the location in the United States recommended by the Carrier, and because a drug screen is not required as part of a return-to-work physical in Canada, there was an additional delay when it was discovered that the drug test results were missing.

The Carrier offered payment of four days' pay during the handling of this dispute on the property. Under the circumstances, finding as we do that Claimant was also culpable in the delay which occurred in his return to work, we find that this was reasonable, and hereby order that Claimant be compensated four days' pay at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.