Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32604
Docket No. MW-33533
98-3-96-3-1094

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier withheld Mr. R. D. Lovell from service from August 14 through September 6, 1995 [System File 10895.TM/12(96-125) MNN].

(2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be compensated for all wage loss suffered during the period of August 14 through September 6, 1995."

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 were given due notice of hearing thereon.

The Claimant, R. D. Lovell, is a regularly assigned Trackman on the Monon Subdivision of the Chicago Division, headquartered at Monon, Indiana.

The Claimant was on vacation from July 13 to August 10, 1995. Prior to his returning to work on August 14, 1995 the Claimant advised Roadmaster Johnny Knight that he had an eye examination and had been to a specialist for a CAT scan while on vacation. In view of this information the Claimant was told to stay home by the Roadmaster until he received clearance from the Carrier's Medical Department to return to work. According to the Carrier it was believed that the Claimant's vision problem presented a potential hazardous condition for both the Claimant and his fellow workers. At the time, this was not an unreasonable conclusion. After evaluation by the Carrier's Medical Department, the Claimant was subsequently cleared to return to work with no restrictions and he went back to work on September 7, 1995.

According to the claim filed by the Organization the Claimant had been cleared to return to work on September 7, 1995 and there was no reason he could not have returned to work immediately on August 14, 1995. Relief requested is all days the Claimant lost as result of this incident, minus Labor Day for which he was paid. That amounts to 17 days' pay.

According to the Carrier's arguments on the property, the ". . . Claimant's removal from work and return to work was [a] matter of his decision and subsequent presentation of documentation from his personal physician. . . ." The record shows that the Claimant's doctor filled out a MD-3 Return to Work Report which was dated August 18, 1995. The Claimant then gave the Report to the Roadmaster. The Carrier's Medical Department in Jacksonville, Florida, received a FAX copy of this Return to Work Report shortly after 4:00 P.M. on August 28, 1995.

Clearly the Claimant did the responsible thing in advising the Roadmaster of his eye evaluations while he had been on vacation. The Roadmaster, in turn, did the right thing in advising the Claimant that he needed clearance to return to work by the Carrier's Medical Department in view of the information offered by the Claimant on his condition. Both parties acted responsibly and such is not the issue in this case. The

Claimant's doctor took four days to fill out the MD-3 Form for the Claimant and that appears to have been a reasonable time frame. In either case neither the Claimant nor the Carrier had control over this. The Carrier's Medical Department, in turn, cleared the Claimant to return to work in about a week, including the weekend, after it received the MD-3 Form, and that also appears to have been a reasonable time frame. The only issue is whether there was an unreasonable delay from August 18, 1995, when the Claimant's doctor dated the MD-3 Form, until August 28, 1995, when the Carrier's Medical Department received the Form for evaluation and who was responsible for this delay.

The Carrier argues that the Claimant offered no evidence on when he actually gave the Form to the Roadmaster to be forwarded to the Carrier's Medical Department. According to the record, this is true. The Claimant is the moving party to this claim. It was up to him to provide information to his Organization on this important issue of when he actually gave the MD-3 Form to the Roadmaster to be forwarded to the Carrier's Medical Department. The Claimant may well have provided the MD-3 Form to the Roadmaster shortly after it was dated by his doctor on August 18, 1995, or he may have provided it as late as August 27 or 28, 1995 which was shortly before it was FAXed to the Medical Department. There is no way for the Board to conclude one way or the other. Given the burden of proof in this case it was not up to the Roadmaster to have provided affirmative defense in the matter at bar.

One additional comment is warranted. We note that the MD-3 Form contains an instruction that ". . . the completed form and all attachments . . ." are to be returned directly to the Chief Medical Officer. Obviously, the instruction is designed to preclude any possible delay caused by third party intervention.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of May 1998.