

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36329
Docket No. MW-36416
02-3-00-3-673**

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employes**
(**Burlington Northern Santa Fe Railway (former Burlington**
(**Northern Railroad Company)**

STATEMENT OF CLAIM:

"Claim of the System Committee that:

- (1) The Agreement was violated when the Carrier failed and refused to allow D.J. Zimney to exercise seniority in his return to service beginning May 11, 1999 and continuing through June 30, 1999 (System File T-D-1834-H/11-99-0477 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D.J. Zimney shall now be '*** made whole for any and all losses beginning May 11, 1999, and continuing. Those losses include the loss of wages, eight hours per assigned work day, payment for any and all overtime lost beginning May 11, and accreditation for any and all lost benefits, including accreditation for vacation qualification, and qualification for health, dental, vision, life insurance benefits.'"**

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.

At the time this dispute arose, the Claimant had been on a leave of absence since May 1996 as the result of an on-the-job injury.

On May 4, 1999, the Claimant informed the Carrier that he had been released by his personal physician to return to work without restriction effective May 11, 1999. On May 5, 1999, the Claimant contacted the Carrier's Manpower Office to exercise displacement, however, the Claimant was informed that he would not be allowed to make a displacement until he had a medical release signed by the Carrier's Fort Worth Medical Department.

On June 10, 1999, the Organization submitted an "open" and "continuing" claim on behalf of the Claimant in which it was alleged that Rules 1, 2, 4, 5, 6, 8, 15, 20, 21, 22, and 38 of the Agreement were violated when the Carrier "refused to allow Claimant his contractual right of displacement effective May 11, 1999 and continues to refuse him his right of displacement."

Specifically, the Organization relied upon Rules 15F and 21F, which state that:

"RULE 15F:

An employee reporting for duty after leave of absence must return to his former position provided it has not been abolished or a senior employee has not exercised displacement rights thereon. In the event an employee's former position has been abolished, or a senior employee had exercised displacement rights thereon, the returning employee will be governed by Rule 8, except that such an employee will be allowed ten (10) calendar days after reporting for duty to exercise seniority or to comply with Rule 9.

RULE 21F:

Bids will not be accepted from an employee while on vacation, sick leave, or other authorized leave for jobs that are bulletined and closed during such absence. Such an employee will be permitted to displace a junior employee from an assignment secured by bulletin that was posted and closed during the absence of the senior employee, provided he does so within five (5) calendar days upon reporting back for service."

According to the Organization, the Claimant attempted to comply with his obligations under the terms of the Agreement and the Carrier denied the Claimant his contractual entitlement(s). As remedy the Organization seeks to have the Claimant returned to his desired position and be made whole for any and all losses beginning May 11, 1999 and continuing.

The Carrier denied the claim contending that the Claimant had been informed, on May 7, 1999, that he would not be able to make a displacement until he had a medical release signed by the Carrier's Fort Worth Medical Department. The Carrier noted

that its Rehabilitation Manager did not receive a medical status form from the Claimant's doctor until May 21, 1999.

The Carrier further asserts that subsequent to May 21 "numerous" attempts were made to contact the Claimant regarding the requisite company physical and drug screening, however, it was not until June 16, 1999 that results of same became available. Thereafter, the Carrier asserts that it acted as expeditiously as possible in returning the Claimant to service.

A review of the record evidence reveals the following: Due to an on-the-job injury, the Claimant was medically disqualified in May 1996. Thereafter, on May 4, 1999, the Claimant's personal physician gave him a return-to-work note stipulating that the Claimant would be released, beginning May 11, 1999, for "usual duties-no limitations."

On May 6, 1999 the Carrier Medical Field Manager Hosutt sent both the Claimant and his attorney the following correspondence:

"I received notice that you obtained a release from your physician, Robert Maxwell, M.D., to return to work on May 11th. On the physician's note he wrote 'usual duties' and 'no limitations'. I'm pleased that you have been able to make a good recovery from your recent surgery. However, in reviewing your file, I noted that neither Nancy Renfrow, the medical care manager, nor myself, have any medical information describing your care since receiving a letter from Melissa Ray, D.O. on April 3, 1998. Ms. Renfrow notes receiving billing sheets from Fairview Hospital, Suburban Radiological, and Fairview-University Medical Center, but no records or reports from these facilities.

As it has been over a year since any medical information has been received, I would request that you or your attorney provide all medical information from April of 1998 to the present time. Also, medical department policy now directs that a 'Medical Status Form' must be completed by your physician to process a return to service. I have included the form with this letter. The above referenced information can be routed to my office via mail or fax, for review by our corporate medical department in Fort Worth.

I appreciate your assistance in these efforts so the return to work process can move along in an expedient manner."

On May 7, 1999, the Claimant contacted the Carrier and attempted to exercise his seniority, but was told that he needed a medical release before he could place on a job. On May 10, the Claimant informed the Carrier that he had not received the letter or the Medical Status Form. The Carrier faxed a copy of the letter and the form to the

Claimant, who faxed his medical information later that day. However, the medical form was not completed by the Claimant's doctor until May 21, 1999.

On June 2, 1999, the Carrier's Medical Department completed its review of the Claimant's medical status and assigned him a Class II, or provisional full duty status, designation. Thereafter, commencing June 3, 1999, it is not disputed that the Carrier made "several" attempts to contact the Claimant regarding the requisite drug screen. On June 10, 1999, the Claimant complied and was tested. On June 16, 1999, the Claimant was released to full duty. The following Monday, June 21, 1999, the Claimant called the Manpower office and asked to bump onto a mobile production gang. The Carrier informed the Claimant that he was not eligible to make the move, to which the Claimant replied that he would "consider his options" and call back the next day. However, the Claimant did not contact the Carrier until Thursday, June 24, and after informing the Carrier of the position he had selected, the Claimant stated that he had chosen to make his placement effective June 30, 1999.

The Organization contends that the Claimant was medically cleared, by his personal physician, to return to service commencing May 11, 1999, and that the Carrier's "arduous delay" in allowing same violated Rules 1, 2, 5, 8, 15 and 21 of the Agreement. However, in these circumstances, we do not concur.

It is a well held principle that the Carrier has the right to require employees who are returning from a medical leave to provide relevant medical information, submit to a physical exam, and complete a drug screen prior to returning to service. In these circumstances, after a three year absence as the result of an on-the-job injury, the Carrier reasonably required specific and thorough medical information before allowing the Claimant to return to service. After a series of delays, the Claimant fulfilled the Carrier's requirements, and was properly released for service on June 16, 1999. And, there can be no dispute that the Claimant's personal physician's note releasing him, without restriction, on May 11, 1999 was insufficient medical information for the Carrier's purposes.

With respect to the Organization's claim for 36 working days from May 11, 1999, and its contention that the Carrier's "arduous delay" prevented the Claimant from returning to work in a timely manner, the record reveals that the Claimant is responsible for a majority of the days he "missed." Further, the Carrier's review and testing process took approximately 12 days, which, in the circumstances, cannot be considered an unreasonable amount of time.

AWARD

Claim denied.

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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 26th day of December 2002.