

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 36763  
Docket No. MW-36034  
03-3-00-3-141

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

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

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to reinstate Mr. F. K. Isom to service beginning May 13, 1998 and continuing through June 15, 1998 (System File B-M-621-F/MWB 98-10-29AB BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant F. K. Isom shall now be compensated for all lost wages incurred as a result thereof.”

**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 was released by his doctor from medical leave after an on-duty injury. On May 13, 1998, the Claimant presented his doctor's release to Roadmaster Weatherd at Great Falls, Montana. The Claimant was advised that before he could return to work he would have to take a return-to-work physical by a physician chosen by the Carrier. The Claimant was further told that the Carrier would make the appointment for him and would advise him of the date and time for the appointment. Thereafter, the Claimant called the Carrier several times to see when his appointment was scheduled and was told that the appointment had not yet been made.**

**According to the Carrier, the first available appointment for a return-to-work physical was given to the Claimant for June 9, 1998. The results of the physical allowing the Claimant to return to work were obtained by the Carrier on June 11, 1998. The Claimant contacted the Carrier's Manpower Office on June 12 and placed himself for return to duty on Monday, June 15, 1998.**

**In short, after presenting clearance from his doctor that he was able to return to work, the Claimant had to wait from May 13 until June 9, 1998 to take a return-to-duty physical required by the Carrier before he was allowed to return to work. This claim seeks compensation for the Claimant from May 13, 1998 until he was allowed to return to work.**

**On the property in its December 18, 1998 letter, the Carrier correctly stated the standard we must use - "[t]he test is whether the Claimant was returned to work in a reasonable time." We cannot find that requiring the Claimant to wait almost one month to take a return-to-duty physical was reasonable. The record establishes that there were several physicians utilized by the Carrier for such examinations. There is just no rational explanation as to why the Claimant had to wait that long to be cleared to return to work after the Carrier was notified by the Claimant that his personal doctor gave such clearance. The Carrier is free to require such return-to-duty physicals by a doctor of its own choosing. However, the Carrier must make certain that such examinations occur in a reasonably timely fashion. In this case, the delay from May 13 to June 9, 1998 was unreasonable.**

**Under the particular circumstances of this case, we believe that the Carrier should have made certain that the return-to-duty physical was accomplished within**

seven calendar days. As a remedy, the Claimant shall be compensated for the time lost as a result of the additional delay beyond seven calendar days from May 13 until the examination was given on June 9, 1998.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

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 29th day of December 2003.