

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40477
Docket No. SG-40075
10-3-NRAB-00003-070303
(07-3-303)

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of K. L. Reich, for 80 hours at his straight time rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 62, when it improperly withheld the Claimant from service from February 13, 2006 through February 27, 2006 after the Claimant requested to return to service on February 6, 2006 from sick leave. Carrier’s File No. 1448082. General Chairman’s File No. N 62 628. BRS File Case No. 13750-UP.

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 claim arose, Claimant K. L. Reich was assigned to the position of Signal Maintainer, headquartered at Le Sueur, Minnesota. On February 6, 2006, the Claimant faxed a medical release form to his Supervisor, requesting that he be allowed to return to work from sick leave as of February 13, 2006. Also on February 6, 2006, the Carrier's medical office faxed a form to his treating physician requesting the Claimant's medical information to confirm his fitness for duty. It is not disputed that the Claimant's doctor did not return the requested form to the Carrier until February 24, 2006. The Carrier returned the Claimant to duty as of February 27.

The Organization's April 4, 2006 claim alleged that the Carrier had violated Rule 62 of the Parties' Agreement when it did not allow the Claimant to return to work after he had given the Carrier more than the required 48 hours' notice that he wished to do so. In its May 24, 2006 letter denying the claim, the Carrier stated that the Claimant's originally proffered return-to-work form "did not contain the full-required information for Claimant Reich to be medically cleared to return to work." The Carrier further stated that the additional information was needed by its Health Services Department "to ensure . . . Claimant was medically safe to return to his former position with or without restrictions and what accommodations if any" might be necessary for his successful return to work.

On June 22, 2006, the Organization appealed the Carrier's denial of the claim and that appeal was denied in a letter dated August 21, 2006. The claim was subsequently progressed according to the Parties' Agreement, including conference on the property held on December 6, 2006, after which it remained in dispute. It is properly before the Board for resolution.

The Organization argued that the Claimant complied with the requirements of Rule 62 when he gave the Carrier more than the mandated 48 hours' notice that he wished to return to work. At that time he also submitted his medical documents. The Organization protests that the request by the Health Services Department for additional information – which resulted in the delay at issue – was arbitrary and without proper grounds.

For its part, the Carrier points out that it attempted to obtain the information it needed to make an informed judgment about the Claimant's return to work by faxing its request to the Claimant's doctor's office on the very day that the Claimant gave the Carrier notice that he wished to return to work. However, as is apparent on the record, the Claimant's doctor failed to respond until February 24, 2006, some 18 days after the request was faxed to the doctor's office. The Carrier contends that it returned the Claimant to work as soon as possible, once it had the necessary information to do so.

The Board reviewed the record in this case carefully. Nothing on the record suggests that the Health Services Department was being arbitrary in its request for additional information before approving the Claimant's return to work "with no restrictions." There is no support in the record to suggest that the Claimant's original doctor's note provided the Carrier with sufficient information to determine his fitness to return to his particular work assignment and/or whether he could actually be returned to that assignment with no restrictions or accommodations necessary. It is unfortunate that the Claimant's doctor was so slow in responding to the Health Services Department's fax, but culpability for that delay does not lie with the Carrier.

In light of the foregoing, the claim is denied.

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 14th day of May 2010.