

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40481
Docket No. SG-40237
10-3-NRAB-00003-070477
(07-3-477)**

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 G. L. Skar, for 64 hours at his straight time rate of pay plus overtime for all calls he missed, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 16, 66 and 80, when it failed to return the Claimant to service after being given a full release by his physician on June 20, 2006 and was then held out of service until June 30, 2006 without providing any reason for holding the Claimant out of service. Carrier’s File No. 1455957. General Chairman’s File No. S-5, 16, 66, 80-775. BRS File Case No. 13771-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 G. L. Skar had been out on sick leave. On Tuesday, June 20, 2006, the Claimant faxed his doctor's return to work without restrictions note to the Health Services Department. After the Health Services Department notified the Claimant that the information provided was insufficient, his physician supplied the Health Services Department with the required information on Thursday, June 22. The Claimant was not cleared by the Health Services Department and permitted to return to service until June 30.

The Organization filed a claim on July 20, 2006 alleging that the Carrier had violated the Agreement when it refused to allow the Claimant to return to work, despite the documents he provided to the Health Services Department. It argued that the Carrier failed to provide any reason for continuing to hold the Claimant out of service until June 30. It requested that the Claimant be made whole for the hours of work he lost, including any overtime he might have missed.

The Carrier denied the claim on September 11, 2006. It contended that the time between when the information was received on June 22, 2006 and the time the Claimant was approved to return to work "was required by the Health Services Department to satisfy criteria to ensure that the Claimant was medically safe to return to his position" and to "properly evaluate [the Claimant's] medical condition to ensure that he was not returned to service prematurely."

The Organization appealed the Carrier's denial on September 21, 2006. It reiterated its position that the Claimant was unreasonably held out of service from the time he submitted the supplemental documentation on June 22 until he was ultimately returned to work on June 30, 2006. The Carrier denied the appeal by letter of November 8, 2006. It maintained that the documentation provided by the Claimant on June 22 was reviewed by the Fitness for Duty Nurse on the following Monday, June 26, 2006. Then the documentation was given to the Associate Medical Director, Dr. Charbonneau, who ultimately completed his review on Thursday, June 30, 2006. The Claimant was released for work on that day. The Carrier argued that it "diligently attended to the processing of Claimant's return to work documentation."

The Board recognizes that the Carrier has a considerable obligation and a managerial right to assure that employees returning to work after sick leave are fit and able to resume their previous positions. However, the Carrier's "management

rights” in this regard are not unfettered and may not be exercised in an arbitrary manner. The Carrier acknowledged that it received the required documentation regarding the Claimant’s fitness for duty on June 22, 2006 – two days after the Claimant initially attempted to return to work. Thereafter, even allowing for the two intervening weekend days, it took the Health Services Department and the Associate Medical Director five days to determine whether the Claimant was fit to return to duty. In that time the Health Services Department did not request that the Claimant undergo an additional examination, nor did it request additional documentation. Under those circumstances, the Board finds the time it took for the Health Services Department to approve the Claimant’s return to work excessive and unreasonable.

The Claimant is not entitled to compensation for the two days required to supply the Health Services Department with supplemental information. Further, it is not unreasonable for there to be a two, or even a three-day delay in processing his return to work via the Fitness for Duty Nurse and the Assistant Medical Director. However, because no further information was requested of the Claimant, there was apparently no reason other than less than diligent processing of his paper work for the additional delay in returning him to work. Thus, the Board finds that the Claimant should be reimbursed for two days’ pay, i.e., for Wednesday, June 28 and Thursday, June 29, 2006.

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 14th day of May 2010.