

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41621
Docket No. SG-41504
13-3-NRAB-00003-110079**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 M. J. Howard, for payment for all time lost including overtime and with benefits unimpaired from July 29, 2009, through August 5, 2009, account Carrier violated the current Signalmen’s Agreement, particularly Rule 62, when it failed to allow the Claimant to return to work after he gave Carrier 48 hours advance notice that he was returning from sick leave. Carrier’s File No. 1525119. General Chairman’s File No. N 62 840. BRS File Case No. 14409-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.

The Organization filed claim alleging that the Carrier violated Rule 62, Leave of Absence, in that the Claimant had been on a medical leave from June 15, 2009 until he was able to return without restrictions to his position as Signal Maintainer on July 26, 2009. Although he followed Agreement Rule 62(B) and provided 48 hours' advance notice, the Carrier held him off of his position. The Claimant made numerous telephone calls in an effort to get back to work without result. The Organization argues that only after the General Chairman became aware on August 3, 2009 and called Labor Relations, did the Carrier finally permit the Claimant to return to work. The Claimant's late return on August 5, 2009 triggers Rule 80 (Loss of Earnings) which states:

"An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss."

In this instance, the Organization argues that the Carrier clearly impeded the Claimant's return to work without any objective justification (Third Division Awards 40839 and 37578).

It is the Carrier's position that it acted appropriately and within the parameters of the Agreement. The Claimant had a leave of absence for a very serious medical condition. When he presented his physician's return to work authorization, the Chief Medical Officer had to consider the information, review it and make an appropriate assessment of the Claimant's ability to return to his position. Additional information was requested. Although the Claimant was temporarily withheld from service while the assessment was made of his ability to properly perform his duties, the delay was neither excessive nor arbitrary (Public Law Board No. 2908, Award 1; Third Division Award 33971).

The timeline for this dispute has been carefully studied. The Organization has the burden to document that the Carrier failed to properly exercise a return to work for the Claimant, but withheld him arbitrarily and unreasonably. The evidence documents that the Claimant had been on a Medical Leave of Absence and filed an extension on July 6, 2009. That extension stated that he would be released without restrictions on July 26, 2009. The Claimant maintains that he notified the Carrier's Medical Department that he was released to return to work on July 26, 2009 at 1:18 P.M. The evidence of record indicates that the Claimant was released to work, but without any statement from his physician about restrictions. In the Claimant's words,

on July 29 Health Services requested that he “get a release from my doctor showing no restrictions” which he faxed at 11:32, on July 29. That is the date when the Carrier had in its possession the appropriate medical release without restrictions.

The Board studied the record to determine when the Carrier reviewed and released the Claimant to return to work. The Organization argues that the Carrier had an obligation to immediately return the Claimant to work, but that it did not do so “until after an inordinate time had passed.” The Carrier requested and received additional information on July 29, 2009. The Carrier argued that it was important to review the information to determine if the Claimant could physically perform his duties safely. The Claimant was released to return to work on August 5, 2009.

The Carrier has an obligation to assure that when it permits the Claimant to return to work, the medical standards necessary for proper safety have been met. The Carrier has a further obligation to expedite the return. In this instance, the Carrier had knowledge on July 6 that the Claimant’s physician was going to permit his release without restrictions on July 26, 2009, although the actual release did not say that. Obtaining that release “without restrictions” is the only factual issue of delay in this record. Having the proper release on July 29, the Claimant should have been released to work within 48 hours. Accordingly, the Carrier acted in a manner to improperly withhold the Claimant. The Rule has been violated and the claim must be sustained for the time period from July 31 to August 5, 2009.

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 24th day of April 2013.