Award No. 13172
Docket No. MW-12831

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1-a) The Carrier violated the effective Agreement and acted without just and sufficient cause when it improperly withheld Stanley Wisnewski from service beginning with February 11, 1960 and continuing through April 17, 1960.

(1-b) The Carrier violated the effective Agreement and acted without just and sufficient cause when it improperly withheld J. E. Stacy from service beginning with March 25, 1960 and continuing through April 24, 1960.

(2) The Carrier be required to reimburse Messrs. Stanley Wisnewski and J. E. Stacy for the exact amount each lost because of the violations referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On February 11, 1960, Claimant Stanley Wisnewski and on March 25, 1960, Claimant J. E. Stacy, who had been and were on authorized leaves of absence because of illness, were informed by their respective personal physician that each was released and could return to his usual and customary duties with the Carrier.

Despite these releases, each Claimant, upon reporting for duty, was advised by the Carrier that he would not be permitted to return to its service until after an examination by, and an authorization from, its Chief Surgeon, Dr. Westline.

Even though an appointment with the Chief Surgeon was sought immeditely after each Claimant reported for duty, it was not until April 15, 1960, that Claimant Wisnewski was given an appointment with and examined by the Chief Surgeon. The Chief Surgeon released Claimant Wisnewski, who then returned to the Carrier's service on April 18, 1960.

serious nature, the employe must in order to protect his rights under this rule, arrange to notify his supervising officer of the reason for his absence within twenty-four (24) hours of his assigned starting time."

The facts of record applied to the rules here controlling require a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were both on authorized leaves of absence because of illness and, when released by their respective personal physicians and told they could return to work, they made application to the Carrier to be returned to their respective positions. It is the Organization's contention that Carrier improperly withheld Claimants from service in that Carrier's physician took an unreasonably long time before permitting them to return, and that they suffered a wage loss by reason thereof, for which they ask compensation.

The record indicated that Claimant Wisnewski was released by his personal physician on February 11, 1960 and was not permitted to return to work until April 18, 1960 and that Claimant Stacy was released by his physician on March 25, 1960 but was not permitted to return to work until April 25, 1960.

The record also discloses that on February 2, 1960 Carrier informed Claimant Wisnewski it was necessary that he obtain a history of his case from his personal physician before Carrier's physician could examine him. This history was not received by Carrier's physician until March 23, 1960. It revealed a history of mental illness which prompted Carrier's physician to inquire from his associates and supervisors as to his behavior and actions on the job prior to his illness. This report was not completed until April 13, 1960. Two days later he was examined, was found physically fit and was approved for a return to service subject to a check-up three months later.

Claimant Stacy was on sick leave from April, 1959 because of a heart condition and requested and received several extensions of his leave the last of which was to April 30, 1960. On February 10, 1960 Stacy expressed a wish to retire and his records were sent to Carrier's chief surgeon for checking. On March 31, 1960 Claimant Stacy's personal physician sent Carrier's physician electrocardiograms taken on February 10 and March 30, 1960 without a recommendation that he could return to work. It was not until April 19, 1960 that Claimant's physician cleared him to return to work. Two days later, Carrier's physician permitted him to return to work subject to periodic recheck.

The Organization argues that Carrier's delay in permitting the Claimants to return to work was due to improperly requiring Claimants to submit their case records to Carrier's physician as a precondition to his examining them. The Organization relies on Rule 33 (h) which provides:

"RULE 33. LEAVE OF ABSENCE

(h) An employe incapacitated because of personal injury or personal illness shall be considered as being on leave of absence during the period he is so incapacitated.

It is understood the Carrier may require evidence in the form of a doctor's certificate of such illness and may require the employes to submit to a physical examination by Company Surgeon before

returning to service. Unless the sickness or injury is of a serious nature, the employe must in order to protect his rights under this rule, arrange to notify his supervising officer of the reason for his absence within twenty-four (24) hours of his assigned starting time."

It is the Organization's view that Rule 33 (h) permits Carrier to give Claimants only physical examination and gives no authority to require the submission of case histories.

Carrier, on the other hand, urges that it was a proper exercise of managerial prerogatives to require that case histories be submitted; that it has been a long practice for the Carrier to require it and that any delay in processing the Claimants' requests was due to their tardiness in complying with Carrier's practice.

The essential question is whether the Rule requires the Carrier's physician to evaluate the condition of Claimant without reference to his past history. Claimant urges a narrow, literal interpretation of the words "physical examination." Carrier urges a broader view so that it includes the case history. The test of a reasonable construction of the phrase is that it ought to be broad enough to accomplish its purpose. Here the purpose is to permit the Company physician to make an evaluation. If he deems the case history essential, his view ought to be preferred over the non-physician who has no responsibility in the evaluation, unless it can be shown that the requirement of the physician is capricious and unnecessary. The Organization has the burden of proof as to this but it has not sustained that burden.

It should be borne in mind that the Company physician must not only make an evaluation as to Claimant's present condition but an estimate of the future. Since the human condition is not static but ever changing, he cannot make a prognosis without reviewing the direction in which the Claimants' condition is progressing. He must, therefore, know how it was before he can say how it will be. Viewed in this perspective Carrier's requirement that case histories be submitted is reasonable and the delay in processing their examination lies mainly in Claimants' failure to comply with the requirement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1964.