

Award No. 14176
Docket No. DC-15487

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(Supplemental)
David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES
Local 354

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 354, on the property of the Louisville & Nashville Railroad Company, for and on behalf of Roscoe Glover, Chef Cook, that he be compensated for net wage loss during the month of April, 1964, account of Carrier depriving claimant of work that should have accrued to him during said month, in violation of the Agreement between the parties hereto.

EMPLOYEES' STATEMENT OF FACTS: Claimant had been out of service since December 22, 1963 account of illness. On February 25, 1964, as instructed, claimant reported to the Carrier's doctor for examination for purposes of determining whether or not he was physically able to return to work. On this date, Claimant was verbally informed that he could return to work. However, laboratory urinalysis report indicated a high content of albumin and, as a consequence, Claimant was advised that he could not return to work. In this letter to Claimant Carrier's doctor further stated:

"The conditions require further medical attention by your doctor, Dr. Hatch, and a complete report from him concerning your diagnosis and treatment. Please give him this letter and when he feels that you are ready to return to work, have him send the report to Dr. John T. Bate, District Surgeon, L & N Railroad Company, 301 West Ormsby Avenue, Louisville, Kentucky 40203."

Under date of March 23, 1964, Dr. Hatch sent the requested medical report to Dr. Bate, in which he concluded that Claimant could return to work without any detriment to his health. In letter dated April 14, 1964, Claimant was instructed to report to Dr. Bate's office for further examination, which took place on April 22, 1964. Finally on April 27, 1964, Claimant was allowed to return to work.

Employees filed a time Claim on behalf of Claimant under date of September 11, 1964, claiming pay for work that should have accrued to Claimant during the month of April, 1964. (Employees' Exhibit "B".) Employees appealed this decision to Carrier's Director of Personnel, the highest officer on the property designated by Carrier to consider appeals, who on November 9, 1964 also declined same. (Employees' Exhibit "C".)

EMPLOYEES' POSITION: There is in existence, and on file with your Board, an Agreement between the parties to this dispute, which agreement is

For all the reasons given in the foregoing, therefore, it is the carrier's position that the claim is entirely without merit and should be denied.

OPINION OF BOARD: The claim is for loss of wages during the month of April, 1964. It is predicated on the premise that the Carrier unreasonably delayed the return to work of Claimant after his physician released him.

Claimant's doctor wrote at length to Carrier's District Surgeon on March 23, 1964. The letter, which is reproduced in the record, details Claimant's physical deficiencies. Briefly, this doctor said that as of that date Claimant was still obese; that his weight "reduction has been attempted on numerous occasions without success"; that symptoms of acute and chronic gouty arthritis occurred "every one or two weeks despite therapy" with drugs; that he was still on medication; that he was being treated for hypertension. The doctor concluded this letter with the following:

"It is, of course, impossible to predict whether new acute episodes of gouty arthritis will occur. However, he is under therapy at the present time and his last uric acid was slightly elevated. The hypertension is being treated, and the albuminuria is most likely secondary to it. His renal function shows a normal BUN. I believe that Mr. Glover could return to work at the present time without any detriment to his health."

Carrier's District Surgeon received the letter on Friday, March 27, 1964, and Claimant notified the Superintendent of Dining Cars by letter on the same date that he was ready to return to work. Because of the seriousness of Claimant's illness, which had existed continuously since December 22, 1963, Carrier's doctor carefully reviewed Claimant's health record, sent a report to Carrier's general attorney and on Tuesday, April 14, 1964, notified Claimant to report for a physical examination. For reasons not shown in the record, Claimant did not appear for such an examination until Wednesday, April 22, 1964. After all tests and laboratory analyses were completed, Carrier notified Claimant on Friday, April 24, 1964, by special delivery letter to report for work on Monday, April 27, 1964. Claimant did so and earned \$73.74 in the month of April.

There is no question that Carrier had the right to expect Claimant to submit to a physical examination before returning him to his job. Claimant failed to report for such an examination from April 14 until April 22. Two days for a review of the findings and of laboratory reports is not unreasonable. He was notified on Friday, April 24 to report on Monday, April 27. Thus, the only issue is whether Carrier waited an unreasonable time between March 27 and April 14 in advising Claimant to report for such an examination.

What constitutes undue delay depends on the circumstances in each particular case. There can be no hard and fast rule fixing a specific number of days between receipt of notice of availability after an illness, and notice to report to the Carrier's physician for examination as reasonable or unreasonable.

The nature of Claimant's illness was serious. It required a study of his physician's report and the Carrier's records. It also justified a review of Carrier's liability. He was absent about four months. Claimant's physician did not say that Claimant was completely cured. On the contrary, his report shows that Claimant was still under his care and that the symptoms of his illness remained. Under these circumstances, the delay between March 27 and April 14, 1964 is not unreasonable.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Carrier was not guilty of unreasonable delay in returning Claimant to work.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION
ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1966.