

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21560
Docket Number SG-21626

David C. Randles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-San Francisco Railway Company:

On behalf of G. W. Lewis, Signal Maintainer, Cherokee Yard, for compensation for time lost, including all paid holidays, from January 1, 1975, until he was returned to service on April 12, 1975, account being withheld from service without cause by Dr. Hollo.
[Carrier file: R-14153]

OPINION OF BOARD: There is no dispute that claimant G. W. Lewis suffered a heart attack in December 1973 following which time he was under the care of his personal physician who certified on December 13, 1974, that the claimant could return to work. Notwithstanding said certification, the Carrier's Chief Surgeon advised that the claimant should be placed upon medical leave and subsequently seek disability retirement. Claimant did request a leave of absence which was granted effective December 19, 1974.

On January 7, 1975, claimant entered a claim for straight time pay from January 1, 1975, because he alleged that he was being improperly withheld from the Carrier's service. In order to substantiate his claim and the certification of his personal physician, the claimant was examined by a cardiologist of his choice who "heartily" recommended his return to service. Subsequently, the claimant's personal physician wrote the Carrier's Chief Surgeon again recommending claimant's return to work. Ultimately, on March 5, 1975, the Carrier's Chief Surgeon recommended that the claimant be examined at a medical facility of the Carrier's choice. This examination produced a positive recommendation resulting in the claimant's return to work on April 12, 1975.

It has been a consistent ruling of this Board that the Carrier has the right to require medical examinations by physicians of their choice. Conversely, the Board has held that a prolonged delay in processing a claimant's medical examination is a denial of his rights. The claimant was withheld from service for four months: December 13, 1974 (the certification by his personal physician) to April 12, 1975 (his return to work).

The claim of the Organization is a request for wages lost from January 1, 1975 - April 12, 1975, during which time the Carrier reversed its prior determination that the claimant should request disability retirement and, also, during which time the Carrier reviewed claimant's physical condition.

It is the opinion of the Board that claimant G. W. Lewis was restrained from returning to work for an excessive period of time given two separate medical evaluations (one from claimant's personal physician and another from a cardiologist) both recommending his return to service. These evaluations were received on December 19, 1974 and January 23, 1975, respectively.

As has been stated, this Board has previously held that a prolonged delay in processing a claimant's medical examination is unnecessary and a denial of his rights. There has been such a delay in this instant matter.

The claimant should be made whole for lost wages from March 12, 1975 - April 12, 1975.

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 Agreement was violated.

A W A R D

The claimant should be made whole for lost wages as indicated in the Opinion.

ATTEST:

A. W. Paulsen
Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of May 1977.