

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22037
Docket Number CL-21942

George S. Roukis, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees

PARTIES TO DISPUTE:

(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8345) that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it failed and refused to allow Mrs. Elizabeth E. Bell to return to service following illness due to accident notwithstanding she presented a bona-fide doctor's release; and,

(b) The Southern Pacific Transportation Company shall now be required to allow Mrs. Elizabeth E. Bell one day's pay at rate of Mechanical Data Processing Clerk, Position No. 951 August 18, 1975 and each day thereafter until restored to service with seniority, hospital and all other rights unimpaired.

OPINION OF BOARD: We have reviewed the precise chronology of events regarding the proper determination of Claimant's physical status and find that inasmuch as Claimant manifested an apparent reluctance to observe Carrier's efforts to provide a medical examination, she did, nevertheless, comply and was examined on December 8, 1975.

While we are clearly mindful in this connection that competent assessment of medical data requires a reasonable quantum of time before a definitive professional judgment can be made respecting a person's physical condition to work, we feel that Carrier waited too long before notifying claimant that she was fit to return to service. She should have been apprised of her condition on December 18, 1975 or immediately thereafter, rather than on December 29, 1975. We find nothing in the record to justify this delay.

Carrier, assuredly has the right to hold a person out of service for just and compelling cause. Claimant's course of conduct up to December 8, 1975 would suffice as a representative example. But when delay becomes somewhat excessive such as is noted herein, then it behooves this Board to fashion a solution commensurate to the dimensions of the problem and consistent with the standards and criteria of our case law. Third Division Award 18797 (Referee Devine) is substantially on point with our conclusion. Accordingly, we will award claimant straight time pay only for all work time lost subsequent to December 18, 1975, and deny the remainder of the claim.

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;

The agreement was violated to the extent expressed in the Opinion.

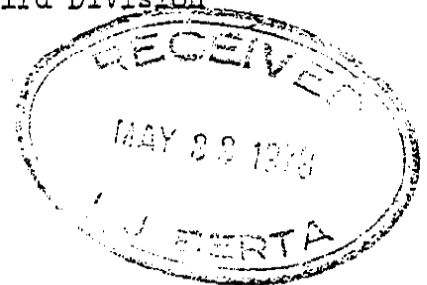
A W A R D

Claim sustained to the extent expressed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulus
Executive Secretary



Dated at Chicago, Illinois, this 28th day of April 1978.