

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22586
Docket Number CL-22616

John J. Mangan, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8595), that:

1. Carrier violated the Agreement between the parties when it caused Dispatcher A. E. Wood to suspend work and submit to physical examination and lose time from work on May 28, 29, June 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19, and 22, 1977.

2. Carrier further violated the Agreement between the parties when they required Dispatcher A. E. Wood to use his private automobile to travel from Victoria, Virginia to Roanoke, Virginia on Tuesday, May 31, 1977, to be examined by Dr. Joseph A. Ragione, Company Doctor, and then return to Victoria and they further required Claimant to use his private automobile to travel from Victoria, Virginia to Salem, Virginia and return on Wednesday, June 22, 1977, to be examined by a Doctor Clarkson.

3. Carrier shall now be required to compensate Dispatcher A. E. Wood for eight (8) hours each date May 28, 29, June 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19 and 22, 1977, as a result of its unilateral action in requiring A. E. Wood to submit to a physical examination and lose time from work as a result thereof.

4. Carrier shall further be required to compensate Dispatcher A. E. Wood for use of his private automobile at the rate of 14¢ fourteen cents per mile for a total mileage of two hundred and thirty-one (231) round trip Victoria to Roanoke on Tuesday, May 31, 1977, and a total of two hundred and forty-one (241) miles on Wednesday, June 22, 1977, for a grand total of four hundred and seventy-two (472) miles.

OPINION OF BOARD: The operative facts of this case are not really in dispute. Claimant, Mr. A. E. Wood, was employed as a Train Dispatcher at Carrier's Crewe, Virginia dispatching office. On this Carrier, in this territory, Train Dispatchers are represented by the Brotherhood of Railway, Airline and Steamship Clerks.

On May 19, 1977, claimant marked off sick. He was treated by his personal physician who, on May 27, 1977, wrote:

"I treated Mr. Wood on May 19, 24th and 27th for a temporary illness. On 5-27-77 I felt that he had recovered and was ready to return to full activity.

Diagnosis: 1. Mild Depressive reaction
2. Gastritis
3. URI"

Claimant, on May 26, 1977, attempted to mark up on his regular position for May 28, 1977, whereupon he was advised that he would be required to be examined by Carrier's Medical Director in Roanoke, Virginia. Carrier offered to arrange the examination for May 27, 1977. However, at claimant's request, the examination was scheduled for May 31, 1977.

At the conclusion of the examination by Carrier's Medical Director on May 31, 1977, it was decided by Carrier that claimant should be given a psychiatric examination by an outside physician and an appointment was arranged for June 22, 1977. Upon completion of the examination on June 22nd, claimant was given a release to return to duty which he executed by protecting his assignment on June 23, 1977.

The claim before this Board seeks payment to Claimant Wood for the eighteen (18) work days beginning May 28, 1977 and concluding June 22, 1977. In addition, petitioner is asking this Board to award payment for the use of claimant's private automobile to travel from his home to the two (2) examinations held on May 31 and June 22, 1977.

There can be no question that Carrier has the right to determine the physical condition of its employees to perform their assigned duties. Neither is there any question to Carrier's right to have Mr. Wood examined by Carrier's own Medical Examiner. Nor is there any proper challenge permissible to Carrier's right to seek an outside opinion before permitting an employee to return to service in circumstances such as exist in this case. However, we are concerned with the amount of time which was consumed by Carrier in making their determinations. There is no explanation in the record for the time period from May 31, 1977 to June 22, 1977.

What was said in Third Division Award No. 14176 (Dolnick) is equally applicable here. There we find:

"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."

In our judgment in this case based on the record before us, the delay from May 31st to June 22nd was excessive. Claimant was out of service twenty-six (26) calendar days (eighteen (18) work days). Ten (10) calendar days should have been sufficient time for Carrier to have arranged for the psychiatric evaluation. Therefore, we will award claimant straight time pay for all work time lost subsequent to June 10, 1977, and deny the remainder of the claim.

We have not been apprised of any contract provision which would allow any payment for the use of claimant's private automobile in situations of this type. Therefore, parts 2 and 4 of the Statement of Claim are denied in their entirety.

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 to the extent indicated in the Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.