

C O R R E C T E D

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23260
Docket Number CL-23345

Carlton R. Sickles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (GL-9011)
that:

(a) Carrier violated the rules of the current Clerks' Agreement at Los Angeles, California, when it arbitrarily removed Mr. J. H. Johnson from his regular assignment, and

(b) Mr. J. H. Johnson shall now be compensated for eight (8) hours' pay each day at the rate of Transcriber Position No. 6005, plus all overtime worked on Transcriber Position No. 6005, commencing June 29, 1978, through and including September 22, 1978, as a result of such violation of Agreement rules.

STATEMENT OF CLAIM:

After an extended illness, claimant returned to duty.

At the end of the first day back, he was notified by the Carrier that he was being withheld from service. The facts are in dispute as to the reason for this action. The Carrier states that he was being withheld pending medical evaluation. The claimant states that he was not informed of the reason for being withheld from service. Claimant asserts that he did not know why he was being withheld from service until such time as he submitted a time ticket thereafter, claiming pay for all time lost to date. It was after that claim that the claimant was provided with a form authorizing the release of medical records to the Carrier and a few days thereafter, claimant was notified that arrangements had been made for his medical examination two weeks hence. The time ticket was declined.

No issue appears to be raised here as to the Carrier's authority to withhold an employee from service in the event there is a question about the medical capacity of the individual. Rather the question at issue seems to be whether the Carrier did, in fact, withhold the claimant from service for medical reasons. The assertion that the claimant was not informed that he was being withheld from service for medical reasons does raise some questions about possible other motives. The Organization also had difficulty getting information from the Carrier.

We find, however, that there is certainly ample reason for the Carrier to be concerned about the physical condition of this employee. Carrier claims that the claimant was informed that he was being withheld pending medical evaluation. It is difficult to separate out a possible double motivation for the activity on the part of the Carrier, and since there is evidence to support a withdrawal of service for medical reasons, it would take a strong showing to overcome this presumption.

The claimant had just returned to service after an extended illness, and during the course of the day, the Carrier alleges that the employee complained of his physical condition. He complained of shortness of breath and chest pains and inquired as to how long he had to work before he could take off on sick leave again.

The Medical Evaluation Form 2820, completed before the claimant's return to work by his personal physician, included seven conditions listed by the doctor for which the claimant had been treated and included restrictions in the type of appropriate employment. The Carrier alleges that it was concerned that the type of work being performed may be having a negative impact upon the claimant.

The fact that the Carrier did not make arrangements for a new medical evaluation of the claimant until after such time as the time ticket was filed for the time lost does raise some question about the original motivation of the withholding from service, but the delay could have resulted from administrative inefficiency.

It is also noted that after the examination had been conducted, that it was determined that the employee was fit for employment and returned to duty. This factor in itself, however, should not have an impact upon the original motivation of the Carrier. To hold that the ultimate result when a person's medical condition is questioned would have an impact upon the initial propriety of taking the action would mean that any such determination by the Carrier would always be made at its peril which could have the impact of deterring such an evaluation which could be to the detriment of the employee, the Carrier, and the general public.

We find that there was ample evidence for the Carrier to have made its decision based upon the medical history of the claimant and, therefore, accept this as the reason for the withholding of the claimant from service.

Under the circumstances of this case, however, particularly in light of the Carrier's having just recently determined that the employee could be returned to service, it is apparent that the Carrier was dilatory in instituting the proceedings to make a new medical evaluation. Carrier has an obligation to render the examination within a reasonable time. For that reason, we are determining that one week would have been a reasonable time to make such determination and that any time lost in addition to that should be compensated to the claimant.

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

Claim is sustained for the period July 6, 1978 through September 22, 1978.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: _____


Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1981.