

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23576  
Docket Number CL-23829

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees  
{ Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9328) that:

(a) Carrier violated and continues to violate the rules of the current Clerks' Agreement at Los Angeles, California, commencing on July 19, 1979, when Lynn A. Guzzetta was not permitted to return to service and protect her regular assigned Position 6165, Data Entry Clerk, and

(b) Lynn A. Guzzetta shall be permitted to return to service assuming Position 6165, Data Entry Clerk, Los Angeles RAO and shall be compensated for eight (8) hours' pay each work day of Position 6165 at rate of pay \$67.9046 in addition to any other compensation she might have received, commencing July 19, 1979, including interest payable at prevailing rate covering such loss and continuing so long as she is wrongfully deprived of her right to work Position No. 6165.

OPINION OF BOARD: On or about July 18, 1979, the Carrier withheld Claimant, a Data Entry Clerk, from service until Claimant and her physician had completed Form 2820 Special and a determination was made that her health was sufficient to allow her to return to work. The Carrier took this action because Claimant had been absent at an abnormally high rate due to illness. Claimant's two personal physicians, Doctors Toma and Akins, completed and returned the form to the Carrier on July 26, 1979 and August 6, 1979, respectively. On October 26, 1979, Dr. Toma completed another Form 2820 Special. Though both forms completed by Dr. Toma stated Claimant could return to service effective July 19, 1979, Dr. Toma also inconsistently wrote that Claimant's dizziness associated with an infection prevented her from working. On January 11, 1980, Claimant furnished the Carrier with a signed Release Form 2805 which she had previously refused to execute. At the same time, Dr. Toma clarified the inconsistent information she had previously given the Carrier by saying that all dizziness caused by Claimant's illness had subsided on July 19, 1979. The Carrier then directed one of its physicians, Dr. Stein, to examine Claimant and he certified that Claimant could return to service on March 6, 1980. On March 27, 1980, the Carrier sent Claimant a letter advising her to immediately return to duty and she subsequently did on or about April 2, 1980.

The Organization contends the Carrier arbitrarily refused to return Claimant to service on July 19, 1979 when two physicians stated she was sufficiently healthy to come back to work and so she is entitled to back wages from July 19, 1979 to April 2, 1980. The Carrier argues that any delay in returning Claimant to duty was the sole result of Claimant's failure to return

Release Form 2805 and Dr. Toma's inconsistent conclusions concerning Claimant's fitness to return to work.

The record clearly demonstrates that most of the delay in returning Claimant to service was attributable to Claimant and her personal physicians. The Carrier reasonably exercised its discretion in continuing to withhold Claimant from service based on Dr. Toma's two statements that Claimant's dizziness prevented her from working. The Carrier could not allow Claimant to return to service because her poor health could jeopardize her own safety and possibly pose a hazard to her fellow employes. Once Dr. Toma clarified her medical evaluation and after the Carrier finally received a signed Release Form 2805 from Claimant, the Carrier directed its own physician to examine Claimant. These delays were caused by the Claimant. However, after its own physician concluded, on March 6, 1980, that Claimant could return to service, the Carrier inexplicably waited until March 27, 1980 before informing Claimant that she could report for duty. This delay was unreasonable. Seven days from the date of Claimant's examination would give the Carrier reasonable and sufficient time to call Claimant back to work. Therefore, Claimant shall receive back wages for the period from March 13, 1980 to March 27, 1980 at the rate of pay then in effect for Position 6165. The remainder of Claimant's request for back pay as well as her claim for interest is denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

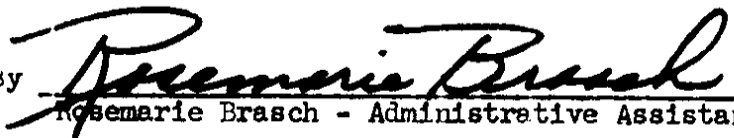
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.

