

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24094  
Docket Number MW-23765

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Chicago, Milwaukee, St. Paul & Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier improperly and without just cause withheld Jewell C. Weaver from service for the period beginning on March 26, 1979 and extending through April 18, 1979 (System File C#51/D-2340).

(2) The Carrier shall now allow Jewell C. Weaver eight hours of pay at his straight time rate for each work day within the claim period described above."

OPINION OF BOARD: The Claimant had been on an authorized leave of absence due to a personal injury and on February 16, 1979 he was released by his personal physician to return to employment. On February 21, 1979 the Roadmaster permitted the Employee to return to work but when he reported on February 26, 1979 he was advised that the Company would not let him work until he was seen by a Company Doctor. That advice was based upon the Company's policy that employees who have been out of service in excess of thirty (30) days as a result of illness or personal injury must be approved by the Chief Medical Officer. Due to prior medical history it was deemed pertinent to obtain the opinion of an orthopedic specialist and that additional step added to the delay.

The Organization sets forth various dates in its handling of the matter on the property which are not significantly contradicted by the Carrier. For instance, we are advised that the Employee did not see a Company Doctor until March 23, 1979 and although he was found to be medically capable of returning to work he was held away from service until April 19, 1979.

The submitted claim commences to run as of March 26, 1979; after the Employee had been passed medically by the Company Doctor.

We have no difficulty with the policy of requiring certain medical clearance when an employee has been away from service and we recognize that the Carrier has certain rights and obligations regarding a withholding of an employee from service pending physical examination. Nonetheless, the cited authority is quite clear that there is an obligation to return employees to service at the earliest possible time under all of the circumstances of record.

If an individual is held out of service by a Carrier, the Carrier does so at its own risk and may be subject to awards of back pay should the delays be extended unduly. We feel that such is the case here, and accordingly we will sustain 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;

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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of January 1983.

