

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24430
Docket Number SG-24430

Robert Silagi, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Western Lines):

On behalf of Signal Maintainer R. G. Poulson for all pay and benefits he was caused to miss while being held out of service December 19 to 31, 1980, account alleged medical problems." (Carrier file: 011-221(P))

OPINION OF BOARD: Claimant's regularly assigned work hours were from 7 A.M. to 3:30 P.M. He was absent from his scheduled duties on December 16 and 17, 1980. He did, however, accept a call for on-time service on December 18th at 1:25 A.M. He did not report for his regular assignment on December 18. The following morning, Friday, December 19, Claimant did come to work. His supervisor, observing that claimant seemed to be in very poor physical condition and could not stand without support, removed him from service pending an evaluation of his physical condition. Claimant was told to report for work on Monday morning, December 22nd at which time he would be examined by a Carrier doctor. On that day Claimant picked up a form to be completed by his personal physician and reviewed by Carrier's Chief Medical Officer. The completed form shows that claimant had been seen by his own physician on December 20th, that claimant suffered from ulcers but could return to work with "no restrictions". The form was signed by claimant's physician on December 22nd. Said form was reviewed by the Chief Medical Officer on the afternoon of December 30th. After reviewing the information, the Chief Medical Officer released Claimant to full duty on December 30 and Claimant reported for work the following day.

The Employees allege that Claimant was disciplined by being withheld from service in violation of Rule 59, Investigations. The Employees also claim a violation of Rule 74 which states that a physical examination, if required, shall be conducted during regular working hours without deduction in pay. Finally the Employees rely upon Rule 72 which states that an employee who loses earnings because of violation or misapplication of the Agreement shall be made whole. The Employees demand payment for six days (including 2 holidays) and 13 hours of overtime.

The evidence fails to support any charge of violation of Rule 59. Claimant was withheld from service only because of his obvious physical weakness. It is well settled by this Board that a carrier may withhold an employee from service pending medical examination if it has reasonable grounds to question his physical fitness (Award 14881 - Dorsey).

With regard to a claimed violation of Rule 74, the record is not clear why a Carrier physician did not examine Claimant on December 22nd. In any event X-1

X-1
Claimant was paid for that day. But he was held out of service from December 23rd to 30th. This includes four working days, two holidays and nine hours overtime worked by the relief maintainer during Claimant's absence.

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The question to be decided is whether the Carrier acted with reasonable diligence in returning Claimant to work. In the absence of any reasonable explanation why a form submitted on December 22nd was not reviewed until December 30th, the question must be answered in the negative. Accordingly the Board holds that Carrier shall compensate Claimant for four (4) days at the pro rata rate, two (2) days at the holiday pro rata rate and nine (9) hours time and one-half.

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

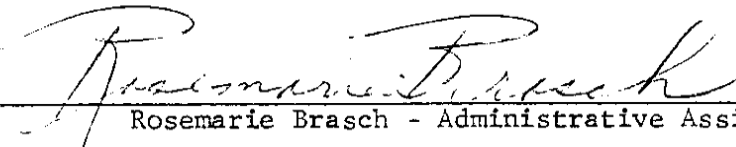
That the Agreement was violated.

A W A R D

Claim sustained 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 15th day of June 1983.

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