

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(former AWP-WofA-AJT-Georgia Railroads)

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

(1) The Agreement was violated when the Carrier improperly withheld Mr. R. P. Silcox from service beginning December 21, 1989 and continuing [System File 90-20/12(90-328) AWP].

(2) As a consequence of the aforesaid violation, Mr. R. P. Silcox shall be compensated for all wage and fringe benefit loss suffered beginning December 21, 1989 and continuing until he was returned to service in accordance with his seniority."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The operative facts in this case are reasonably clear and undisputed. Claimant, while working as a Trackman in the vicinity of Lithonia, Georgia, was observed by his Foreman in a sitting position while engaged in the act of placing tie plates. When questioned about this, Claimant indicated that he had strained his knee and found that he exerted less pressure on the knee from a sitting position. The Foreman reported this observation to the Roadmaster who also questioned Claimant relative to the situation and received basically the same explanation. Thereupon, on December 21, 1989, Claimant was informed that he was being withheld from service pending a medical evaluation of his ability to safely perform his duties.

So that a complete picture of this dispute may be examined, it is necessary that we set forth the chronology of events which occurred subsequent to December 21, 1989. To begin, Carrier's Chief Medical Examiner instructed Claimant on December 26, 1989, to present himself for a neurological evaluation by a physician of Carrier's choice on January 9, 1990. Subsequently, by letter dated January 8, 1990, the Chief Medical Examiner instructed Claimant to present himself for an orthopedic examination by a physician of Carrier's choice on January 31, 1990. Claimant attended both examinations as scheduled. The report from the January 9, 1990, examination was submitted to Carrier under date of January 12, 1990. The report from the January 31, 1990, examination was submitted to Carrier under date of January 31, 1990.

The next step in the chronology occurred on March 2, 1990, when Carrier's Medical Department released a report to the Engineering Department indicating that Claimant was qualified to return to duty effective January 31, 1990. Also on March 2, 1990, the Chief Medical Examiner wrote to Claimant informing him that he was "... medically qualified to perform service with the restriction of 'trackman only.'" Claimant finally returned to service on March 26, 1990.

In the meantime, the Claim was initiated on February 16, 1990, and has been progressed through the usual and customary handling on the property.

The Organization argued that Carrier had no right to remove Claimant from service in the first place on the basis of the "... word of a non-professional, Roadmaster Bowen," It continues with the argument by asserting that once the Claimant had been removed from service, the Carrier was "... obligated to move forth expeditiously and arrange for a physical examination to support its position." It concludes that the delays experienced in this case did not constitute expeditious handling and, therefore, the claim should be approved as presented.

Carrier asserts that its right to determine the ability of an employee to properly and safely perform his duties is an inherent right, that the scheduling and evaluation of medical reports were timely accomplished, and that the claim as presented is excessive because Claimant, of his own volition, remained off duty from March 2 until March 26, 1990.

The right and responsibility of the Carrier to determine the physical and emotional ability of its employees to properly and safely perform their assigned duties has been often examined by this Board and has repeatedly been recognized as proper. (Third Division Awards 25634, 24933, 24471.) Contrary to the assertion as made by the Organization, the Roadmaster is a professional in his area of expertise. When an employee indicated to the Roadmaster that he was experiencing physical difficulty in the performance of his duties, the professional Roadmaster was obligated to make a determination of the situation by referring the matter to medical professionals. In this case, the initial action as taken by the Roadmaster was well reasoned and proper.

Having said that, however, we concur with the Organization's contention that once an employee has been removed from service for medical evaluation, such action must be expeditiously pursued. But there should not be any set amount of time or any predetermined number of days in which to schedule examinations. Neither should there be a pre-determined amount of time in which to make determinations after medical examinations have been conducted and reports issued. In the busy medical profession, scheduling can be a problem over which the Carrier has no control. In a given case, one report may well open the door to other potential areas of concern which must be examined. To say that 5 days or 7 days is always sufficient to accomplish an examination or to make a determination after the examination is simplistic. Each case must be examined on the individual fact situation which exists.

In this case, the fact situation indicates that Carrier acted expeditiously in the scheduling of the desired examinations. The employee was withheld from service on December 21, 1989. By December 26, 1989, Carrier had arranged for the first evaluation. By January 8, 1990, it had arranged for the second evaluation. In our opinion, in this case, these actions were reasonable and expeditious.

We are concerned, however, with the timeliness of Carrier's decision to return Claimant to service following the issuance of the evaluation reports by the medical experts chosen by Carrier. As noted earlier, the report from the January 9, 1990, evaluation was issued on January 12, 1990. Carrier had it in hand prior to the January 31, 1990, examination. As for the report from the January 31, 1990, examination, it was dated that same date - January 31, 1990. Carrier says, however, that the January 31, 1990 report was not received until February 13, 1990. There is no indication whatsoever in this record to lend credence to this assertion. The report is dated January 31, 1990. There is no cover or transmittal letter in the record. There is no "received" date stamp or indication of any kind on the document. There was no mention of the February 13, 1990 "received" date in any of the on-property exchanges of correspondence. We find it unusual that thirteen days would be required to transmit a letter from Athens, Georgia, to Jacksonville, Florida. We are also concerned with the delay which extended until March 2, 1990, before Claimant was informed of his return to service. By any measure, this delay to March 2, 1990, was not expeditious.

As for the delay from March 2 until March 26, 1990, when Claimant actually returned to service, we are at a complete loss to make a determination on this point. There is not one word of explanation or proof on this aspect of the claim to be found in any of the on-property correspondence which would explain this delay. In the Submissions to this Board, Carrier says it was Claimant's own volition which caused the delay, but offers nothing more. The Organization says "... after receiving no further correspondence from the Carrier, Claimant Silcox was reinstated to his former position on March 26, 1990, restricted to perform only trackman duties." This statement proves nothing and ignores the March 2, 1990, letter from the Division Engineer to the General Chairman as well as the above-mentioned letter dated March 2, 1990, from the Chief Medical Examiner to Claimant.

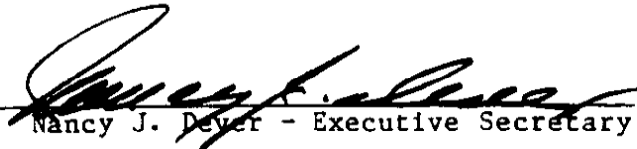
From a review of the complete situation which existed in this case, it is our conclusion that Carrier acted properly and prudently in removing Claimant from service pending an evaluation by medical personnel; that the medical evaluations were expeditiously scheduled; but that the Carrier did not act expeditiously in its determination to return Claimant to service. Therefore, we conclude that Claimant is entitled to be compensated for all time lost from January 31, 1990, to and including March 2, 1990. The remainder of the claim as presented is denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1992.