

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31470
Docket No. MW-32116
96-3-94-3-517

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

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

- (1) The Agreement was violated when the Carrier improperly withheld Mr. J. Ruckman from service beginning September 14 through October 1, 1993 [System File C-TC-5635-SPG/12 (93-1141) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. Ruckman shall be compensated for one hundred ten (110) hours at the SPG Class 'A' Operator's straight time rate of pay and ten and one-half (10.5) hours at the time and one-half rate of pay."

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 employee 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.

Claimant holds seniority as a Class A Operator on the System Production Gang roster. Claimant was working on SPG Force 6XC3 when granted a leave of absence for an off-duty injury. On Monday, September 13, 1993, Claimant reported to the Carrier's Roadmaster for the purpose of returning to work. After furnishing the Roadmaster with his physician's release, the Claimant was given a Carrier form to be completed by the doctor. The form was completed and forwarded to the Roadmaster by fax on the afternoon of September 13. On September 14 the Roadmaster faxed the Claimant's physician an additional form. The form was completed and faxed back to the Roadmaster.

On September 23 Claimant contacted the Organization about his status. The Vice General Chairman contacted the Carrier's Chief Medical Officer on Monday, September 27, and was informed the CMO had no information concerning the Claimant's attempt to return to work. The Vice General Chairman then faxed the information to the CMO and the Claimant was approved to return to duty on September 28. Claimant actually returned to work on Monday, October 4, 1993.

The claim presented by the Organization is for pay for the period September 14 through October 1. However, it concedes in its submission that the Carrier must be given a reasonable time to evaluate the medical information. In fact, it cites Awards which allow the Carrier five business days.

The Carrier argues that the Claimant presented the medical information to the wrong Carrier officer. However, it did not present any procedure that indicated what Carrier officer should have been given the information. The record is also void of any proof that the Carrier's Roadmaster refused the medical information and that instructions were given the Claimant to handle the process differently.

Accordingly, the Board finds the Carrier was dilatory in processing the Claimant's return to work. However, the Carrier is entitled to sufficient time to reasonably evaluate the information. The Awards cited by the Organization giving the Carrier five business days seem reasonable. Therefore, the Carrier had until September 21 to rule on the medical evidence. As a result the Board will award the Claimant pay for time lost beginning Tuesday, September 22, 1993. Claimant could have returned to work on September 29, but chose to wait until October 4 to return to work. Therefore, the Carrier's liability ceases on September 29, 1993.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 1996.