

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31843
Docket No. CL-32247
93-3-95-3-49

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11124) that:

1. Carrier violated the agreement when it removed Operator George LoCascio from service on November 30, 1993, and withheld him from service thereafter despite the fact that Claimant had been approved by Carrier's medical examiner to return to service and had, in fact, returned to service.
2. Carrier shall compensate Mr. LoCascio for all time lost as a result of having been improperly withheld from service.”

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 were given due notice of hearing thereon.

At the time this case arose, Claimant was assigned as an Operator. On November 15, 1993, Claimant was taken ill while at work. He was taken by ambulance to an emergency room. On November 22, 1993, Claimant contacted his immediate supervisor to inform him that he was able to return to work. The supervisor told Claimant to report to the Carrier physician for a physical exam, and to bring a "return-to-work" slip. On that same date, Claimant was examined by the Carrier physician and approved for return to work. Claimant worked on November 24, 25, 25, and 29, 1993 with November 27 and 28 as rest days. On November 29, 1993, Carrier's Chief Medical Officer discovered that Claimant had not provided the examining physician with the required return-to-work form. Claimant was removed from duty as of November 30, 1993, and subsequently informed that he would be required to provide a return-to-work form prior to being returned to service. On December 21, 1993, Claimant presented Carrier with the required form. The form was dated December 16, 1993, and stated that Claimant would be unable to return to work until December 20, 1993. Claimant was again examined by Carrier's physician and returned to work on December 27, 1993.

Carrier initially argues that the claim should be dismissed on procedural grounds. It notes that while the Organization's letter appealing the case to the Board is dated January 26, 1995, the postmark on the envelope containing Carrier's copy of that letter is January 30, 1995 -- four days beyond the nine-month time limit. The postage meter postmark on the envelope in which its letter was contained is dated January 26, 1995, but the superimposed United States Postal Service postmark is dated January 30, 1995.

The "original" of the letter in question was received by the Board on February 1, 1995. In light of the fact that the original letter was mailed from Washington, DC, it is unlikely that it was mailed as late as January 30, 1995. It appears that there may have been some delay in the copy forwarded to the Carrier. There is no showing on the record, however, that such delay was the responsibility of the Organization. Thus, the Carrier's procedural objection cannot be sustained.

The Organization seeks full payment for the time Claimant was held out of service prior to the Chief Medical Officer's discovery that the return-to-service form was missing. It points out that he was approved by Carrier's physician to return to work, worked without incident for four days, and then was precipitously pulled from service without good reason.

The Carrier contends that Claimant's employment for four days was in violation of Carrier's reasonable "return to work" policy, and that it was well within its rights to remove him from service, when it was discovered that he had not provided the return-to-work form at the time of his first physical exam. It also notes that Claimant did not comply with the directive to provide necessary documentation until December 21, 1993, nearly a month after he first reported for service after his illness.

The Organization correctly points out that Claimant worked with a Carrier physician's "approval" for four days before being removed from service. Thus, at least one Carrier physician felt he was fit to return to work. His failure to provide the "return-to-work" form does not negate that approval. However, once reminded that he had failed to provide the form in question, Claimant was obliged to provide it. For reasons not clear on this record, Claimant did not do so until December 21, 1993. In addition, the form he provided indicated that he was able to return to work on December 20, 1993. There is no indication on this record that his physician had cleared him to return prior to that date. Carrier made a reasonable request that Claimant provide the "return-to-work" form -- a request he should have been able to comply with in one or two days if, in fact, his physician had approved him to return. The record before this Board suggests that Claimant's physician had not given him such approval. The fact that Claimant benefitted from one Carrier physician's unwitting oversight does not entitle Claimant to a windfall gain from his own lassitude.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.