

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32197
Docket No. SG-32803
97-3-96-3-119

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co. (SP):

Claim on behalf of G.T. Nelson for payment of 96 hours at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 69, when it improperly continued a medical restriction on the Claimant and held him out of service from July 14 to July 29, 1994. Carrier’s File No. SIG M94-6. General Chairman’s File No. SWGC-971. BRS File Case No. 9777-SP.”

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.

On July 14, 1994, the Claimant's physician provided the Claimant with a page from his prescription pad which stated "patient is released to return to full duty work." In addition, he completed a medical report form which reported that Claimant had been operated on for a broken foot on May 20, 1994, and in the "Comments" section added: "(Claimant) is released to return to work, however, his foot is still somewhat edemous and painful. Patient has been having physical therapy to aid in the healing progress."

Upon receiving the report, the Carrier's medical department determined that Claimant could not be allowed to return to work while his foot remained swollen and that Claimant should submit a further evaluation from his Doctor when he believed Claimant's condition allowed unlimited work. On July 26, 1994, the Claimant's Physician submitted a second medical report. In the Comments section he stated: "Claimant is able to work without any limitations." The following day Claimant was approved by the Carrier's medical department to return to work.

The Organization contends the Carrier violated the Agreement when it withheld the Claimant from service and deprived him of his right to perform the work of his regular assignment.

The Carrier contends there has been no violation of the Agreement because the Carrier made proper medical decisions to deal with a medical uncertainty.

This Board has consistently held that a Carrier's determination of an employee's physical ability to work will be upheld unless it is found to be unreasonable or arbitrary. In this case, the original information from the Claimant's physician was unclear, at best contradictory. Claimant's doctor approved Claimant's return to work at the same time he reported that Claimant's foot was still swollen and painful. It was certainly reasonable for the Carrier's medical department to desire a more determinative statement from Claimant's doctor. When it received said statement, Claimant was immediately approved to return to work. Thus the Carrier acted with proper caution by insuring the Claimant would be able to perform his job responsibilities in a safe manner without imperilling his health. Carrier's decision was not unreasonable or arbitrary. No contract violation occurred.

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 17th day of September 1997.