

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37690  
Docket No. CL-38513  
06-3-04-3-489**

**The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Transportation Communications International Union**  
**(National Railroad Passenger Corporation (Amtrak)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Organization (GL-13057)  
that:**

- 1. The Carrier violated Rules 22, Article XIV,(g) the September 1991 Mediation Agreement and other related rules of the Clerical Agreement, when on June 02, 2003, Claimant, Trent Denny was released from his physician's care and cleared to return to service following a medical leave of absence (MLOA). Subsequent to Claimant's doctor releasing him, the Carrier failed/refused to allow Claimant to return to service.**
- 2. The Carrier shall now be required to reinstate Claimant to service with all of his seniority and all other rights unimpaired as of June 02, 2003.**
- 3. The Carrier shall now be required to compensate Claimant forty (40) hours per week at the Baggageman pro rata rate as of June 02, 2003, and continuing until this dispute is settled or this claim honored.**
- 4. The Carrier will be required to reimburse Claimant for all of his out-of-pocket medical and dental expenses to which he would have been afforded under the Agreement. Claimant shall continue to accrue time and benefits towards vacation,**

**Railroad Retirement and other entitlements as if he had returned to service on June 02, 2003."**

**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 of the incident that gave rise to this claim, the Claimant was employed as a Baggagehandler. In April 2002, the Claimant sustained an off-duty injury and was placed on a Medical Leave without pay. On February 26, 2003, the Carrier's Medical Department requested a detailed report of his injury and treatment. On June 2, 2003, the Claimant furnished a return-to-work physical form from his doctor in Bogota, Columbia, that stated, "Mr. Denny is now able to return back to work beginning June 2, 2003, with no work restrictions."**

**The Carrier's Medical Director reviewed the return-to-work note from the Claimant's Columbian doctor, together with the Claimant's medical documentation submitted to date. As a result of this review, he concluded that the medical information contained in the Claimant's file was insufficient to justify his lengthy absence from work. On June 16, 2003, the Claimant was so notified. He was also notified that he was required to submit a detailed narrative of his injury and treatment (as requested in the Carrier's February 26, 2003, letter) and the results of a functional capacity evaluation. The requested narrative was received by the Carrier and on July 31, 2003, the Claimant was notified that his Leave of Absence was adequately documented. He was again notified to supply a functional capacity evaluation before a return-to-work examination could be scheduled. The functional**

capacity evaluation was received by the Carrier on September 23, 2003. A return-to-work examination was performed on October 1 and the Claimant was returned to work on October 4, 2003.

The Organization in this instance has presented a claim arguing that the Carrier was derelict in its duties by not granting the Claimant a return-to-work examination sooner than October 1, 2003, and for not offering the Claimant any assistance in locating a facility where he could receive a functional capacity evaluation. The Organization also argued that because the Carrier was withholding the Claimant from duty for medical reasons, the Carrier should have honored the Organization's request that an impartial doctor be used to evaluate his ability to return to work in accordance with Rule 23(b) and (c).

The Carrier argued that the Claimant was required to submit medical information on a regular basis to justify his long absence from work. The Carrier also contended that it has the right and the responsibility to ensure that the Claimant was fully capable of performing his duties in a safe manner before he was returned to work from an extended Medical Leave.

The Board reviewed the record in detail and considered the many arguments presented by both parties. As a result of that review, it is clear that there were unusual circumstances in this case, including a long leave with inadequate medical information to justify it; the failure of the Claimant to respond to the Carrier's February 23, 2003, request for detailed information; the submission by the Claimant of a return-to-work note by a doctor in Bogota, Columbia; delays in the exchange of letters by both the Carrier and the Claimant; and a difficulty in locating a facility to administer a functional capacity evaluation. All of these factors caused the long delay in returning the Claimant to work.

In the final analysis, the Carrier has the right to require complete medical records from an employee's physician before that employee is considered for return to service from a Medical Leave. The time it took for the Claimant and his doctor to supply the required medical information to the Carrier's Medical Department was not the fault of the Carrier. Once the Carrier had the required information, it acted in an expeditious manner and returned the Claimant to work. The Carrier did not

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unreasonably delay the return-to-work process or violate any terms of the Agreement by its actions.

**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 30th day of January 2006.**