

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 151
UNION PACIFIC RAILROAD COMPANY) Award No. 146
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: June 18, 2008

STATEMENT OF CLAIM:

- (1) The Carrier's delay in returning Mr. Tim J. Galvan to work following his medical leave of absence and release to return to work on August 20, 2007 is unjust, unwarranted, excessive and in violation of the Agreement (System File D-0750U-202/1487557).
- (2) As a consequence of the violation outlined in Part (1) above, we request that Mr. Galavan be allowed compensation for all hours (straight time and overtime) he was not allowed to work between August 24, 2007, his planned return to work date, and September 9, 2007 when he was returned to service. This shall include eight (8) hours' holiday pay for the observance of the Labor Day holiday. This equates to ninety-six (96) hours' straight time pay and any overtime worked by the gang.

FINDINGS:

Public Law Board No. 6302 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The record reflects that, beginning July 1, 2007, Claimant was on a medical leave of absence and under doctor's care for a lumbar injury. On August 14, 2007, a note from Claimant's doctor was faxed to Carrier releasing Claimant to return to work on August 24, 2007. This was followed by August 20 and August 22 notes from Claimant's physical therapist.

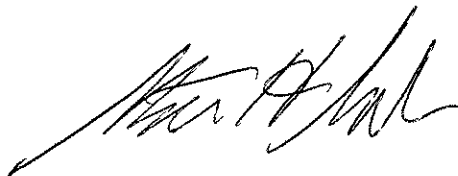
Carrier's Medical Department did not clear Claimant to return to service until September 6, 2007.

As we stated in Case No. 17, Award No. 8, "Carrier is charged with the responsibility for the safety of the employees and its decisions to withhold employees from service should not be second guessed by a reviewing tribunal. The Board should overrule such a decision only when it is shown to have been made in bad faith or to have been arbitrary or capricious." We further held, however, that "once Carrier withholds an employee from service for medical reasons, it has a duty to conduct the medical review expeditiously and, once the medical issues are resolved, to return the employee to service promptly."

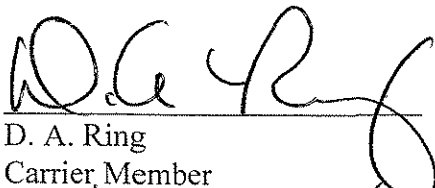
The Organization contends that Carrier unduly delayed Claimant's return to service. The Organization maintains that Carrier had all of the medical information it needed to return Claimant to service when it received his doctor's release because Claimant had been supplying Carrier with weekly progress reports from his doctor and physical therapist. Carrier contends, however, that the information provided was insufficient for its Medical Department to determine whether Claimant could return to work safely and that as soon as its Medical Department received sufficient information, it returned Claimant to work. The record, as developed during handling on the property, does not allow us to resolve this conflict. Because the Organization has the burden of proving Carrier's actions to have been arbitrary or capricious, the claim must fail.

AWARD

Claim denied.



Martin H. Malin, Chairman



D. A. Ring
Carrier Member



T. W. Kreke, Employee Member
Employee Member

11-12-08
Dated at Chicago, Illinois, October 30, 2008

Nov 12, 2008