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PUBLIC LAW BOARD NO. 2439

OFFICE OF GENERAL CHAIRMAN

Award No. 12
Case No. 12

PARTIES Southern Pacific Transportation Company (Pacific Lines)
TO and
DISPUTE Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the Agreement when on June 19, 1978 it failed to honor Claimants Return to Service Release issued to him by his attending physician.
2. That the Carrier now compensate Claimant for all wage loss suffered commencing June 19, 1978 up to and including July 7, 1978."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

This dispute involves a series of very carefully defined dates upon which certain actions took place. On April 1, 1978 Claimant sustained an off duty injury. After receiving appropriate treatment, Claimant reported to his superior on June 16, 1978 with a release from a Dr. Morris indicating that he was released to return to full duty on June 19, 1978. Claimant was apparently advised that he would not be allowed to return to duty before the Chief Medical Officer reviewed his case. This was allegedly a new policy of the Carrier, according to Petitioner. Claimant was provided with the necessary Carrier forms which were completed by his personal physician. The physician filled out the form dated June 20 indicating that Claimant could return to work on June 21 with a weight restriction with relation to his injury. The physician noted that he should not be permitted to lift heavy objects with his left arm. Subsequently, on June 28, 1978 the same doctor released Claimant to return to duty effective June 29 with no restrictions. Claimant was not permitted to return to his position by Carrier until

July 7, 1978.

The record indicates further that Claimant received a certified letter from the Division Engineer dated June 28, 1978 indicating that it was necessary that the Chief Medical Officer review his case before he could return to duty from his disability. That letter also enclosed an appropriate form which Claimant's physician was to complete. Carrier states that following that letter the final release form, dated June 28, from Claimant's physician was not received until July 5 by Carrier's Chief Surgeon. It is noted that the final release form indicated that Claimant would be available for work starting June 29 without restriction.

Carrier asserts that it promptly released Claimant for duty after receipt of the medical release and examination by the Chief Medical Officer on July 5, 1978. Hence, there is no liability and Carrier did not unnecessarily restrict Claimant from returning to work. Petitioner, on the other hand, indicates that the new policy of Carrier had never been disseminated to the employees and that the delay in returning Claimant rests solely on Carrier. There is no dispute but that Carrier has the right to examine the physical condition of employees returning from disability leave.

It must be noted that there is no evidence that Carrier's policy with respect to return from disability leave was ever communicated to the employees prior to the receipt of the certified letter dated June 28 by Claimant. The dissemination of policies such as this are vital for the effective maintenance of a uniform policy on the part of the Carrier without later objection (such as herein) by the employees. It is clear, however, that Claimant could not have returned to work at best prior to June 29, 1978 without restriction. This conclusion is based upon his own physician's release. Since Claimant had diligently sought a return to work starting on June 16, it seems rather unconscionable to expect that his return should have been delayed to July 7, even with the restrictions replaced by the unrestricted release subsequently. Carrier's communications are obviously at fault. Based on the facts of the medical records pre-

sented in this dispute, it seems that Claimant did indeed miss what appears to be five working days as the result of Carrier's failure to disseminate information and relatively slow handling of this matter. Therefore, the claim will be sustained to the extent of five working days rather than the fifteen, as claimed by Petitioner.

AWARD

Claim sustained in part; Claimant shall be compensated for all wage loss suffered to the extent of five working days.

ORDER

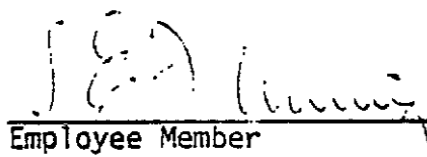
Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

San Francisco, California

3-11, 1980