

PUBLIC LAW BOARD NO. 5918

AWARD NO. 22
NMB CASE NO. 22
UNION CASE NO.
COMPANY CASE NO. ENF96-1337

PARTIES TO THE DISPUTE:

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(SPCSL CORP.)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Claim of SPCSL Engineer T. A. Jacobson for all time lost, account erroneously held out of service 15 days (July 1-15, 1996) pending medical release.

OPINION OF BOARD: A few days before he was scheduled to go on vacation, Engineer T. A. Jacobson ("Claimant") suffered a spider bite on June 14, 1996. He was off sick for 3 days and then began two weeks' vacation from June 17 to June 30, 1996. It is not disputed on this record that on June 21, 1996, his doctor released him to return to work with no restrictions in connection with the spider bite. When he tried to mark up for July 1, 1996, following his vacation, however, he was told that he would have to get a doctor's release from Quincy Clinic on SP Form 5662 and mail or fax the original form to San Francisco, so the Carrier's Medical Department could determine if he should be released.

Carrier management provided Claimant with SP Form 5562 on July 5, 1996 which he presented to the Quincy Clinic at some point thereafter. When he had received no response by July 10, 1996, Claimant complained to his BLE representative about the "bureaucratic delays" in his return to service. When these concerns were relayed to Carrier management, Claimant received a telephone call from Assistant Division Superintendent Keith Hamilton, who suggested that he go back to the Quincy Clinic. Engineer Jacobson did so and then contacted Mr. Hamilton and

informed him that Quincy Clinic claimed no knowledge about the SP 5662 release form. After Mr. Hamilton personally intervened, the Clinic finally furnished SP form 5662 release to Engineer Jacobson on July 15, 1996. He immediately complied with the Carrier's instructions by faxing it to Carrier's offices in San Francisco and was released to return to service on July 16, 1996.

It is well established that Carrier has reserved managerial discretion to require an employee returning from medical leave of absence to provide medical certification of fitness to return to work, including completion of appropriate paperwork like SP Form 5662. However, it is also established that such discretion must be exercised with due diligence and efficiency, so as to avoid un reasonable delays in restoration of the Employee's earning capacity. Each such case turns on its own unique facts and circumstances, but in this particular case fifteen (15) days was an unreasonably long time for completion of the process. Si far as the record shows, Claimant has no contributory role in that delay and we are persuaded that Carrier is liable for the undue delay between July 6-July 10, 1996 in the handling of Form 5562 by its agent, Quincy Clinic. On that basis, we sustain the claim for five (5) basic days.

PLB NO. 5918

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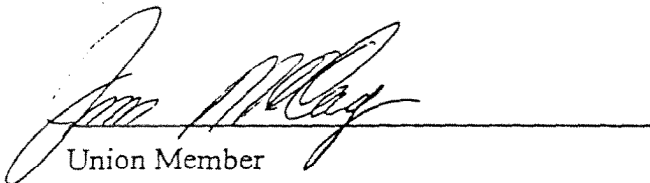
AWARD

- 1) Claim sustained in part and denied in part, as indicated in the Opinion.
- 2) Carrier shall implement this decision within thirty (30) days of its execution by a majority of this Board.



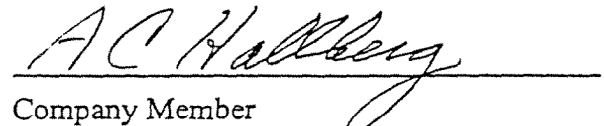
Dana Edward Eischen, Chairman

Dated at Spencer, New York on November 5, 1999



Union Member

Dated at Cleveland, Ohio
on November 15, 1999



Company Member

Dated at Omaha, NE
on Jan 3, 2000