

Public Law Board 7163

PLB 7163
Award No. 243

Parties to Dispute:

Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

And

CSX Transportation, Inc.

Statement of Claim:

"Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier improperly failed to allow Mr. G. McLean to return to service beginning on June 4, 2013 and continuing through and including June 17, 2013 and (System File S21706013/2013-146577 CSX).*
- 2. As a consequence of the violation referred to in Part 1 above, Claimant G. McLean shall be compensated for ten (10) hours straight time and all overtime made by Gang 6XC1 and all days counted towards vacation for the time he was improperly withheld, as well as all other relief contained in the Organization's letter dated June 20, 2013 (Employee's Exhibit "A-1")."*

Findings:

This quarrel between the Carrier and the Organization centers on the Organization's belief that Claimant G. McLean was withheld from service well beyond the time the Carrier had received information required to allow him to return to work. The Organization cites to Rule 5 of the CBA.

Rule 5 reads in pertinent part:

"...an employee returning to duty after leave of absence, vacation, sickness, jury duty, disability, or suspension shall return to his former position and may, within five (5) days after his return to his former position, exercise displacement to any position in any classification advertised during his absence or may displace any junior employee promoted during his absence..."

The Organization pointed out that Claimant Mr. G. McLean was released from the hospital on May 29, 2013. He attempted but was denied permission to return on May 30, 2013 – pending doctor's release and completion of medical forms. On June 4, 2013, the Claimant was cleared to return to work without restrictions. On June 5, 2013, the Carrier required the Claimant to get a physical. On June 6, 2013, the Claimant obtained a physical and submitted it to the Carrier on June 7, 2013. Still, the Carrier denied permission to return to work. After numerous conversations between the Claimant and the Carrier's medical department; the Claimant and his supervisor; the Carrier and the Claimant's personal physician; the Claimant was allowed to return to work on June 17, 2013.

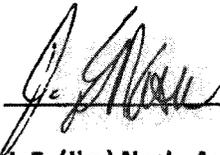
According to the Carrier, several contributing factors to the delay had to do with the Claimant's failure to, accurately, complete and to, timely, submit the medical forms. The Carrier emphasized that its first knowledge as to the nature of Claimant's illness – a heart condition involving a triple by-pass and the insertion of three stints – was on May 30, 2013. In order to ensure the Claimant's safety and fitness to return to work, the Carrier exercised its prerogative to conduct its own physical examination. All of those things, the Carrier argued, required verification, communication, effort and time.

After studiously reading the submissions, reviewing the evidence, and positions staked out by partisan parties, this Board feels sufficiently conversant with the facts to issue an opinion.

We find the explanation provided by the Carrier as to the delay in the Claimant's return to work was, largely, attributable to the actions and delays of the Claimant. The record established that under the facts and circumstances, the Claimant might have returned to work, perhaps, a day earlier. For that reason, we award the Claimant one (1) day's pay.

Award:

Claim is partially sustained and partially denied, for reasons outlined, above.

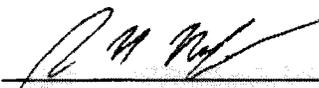


J. E. (Jim) Nash, Arbitrator, Inc.
Chairman and Neutral Member



Katrina Donovan
CSX Transportation, Inc.

Carrier Member



Andrew M. Mulford
BMW

Organization Member

Dated this 23 day of December 2017