

SPECIAL BOARD OF ADJUSTMENT NO. 894

Case No. 1573      Award No. 1573

PARTIES Brotherhood of Locomotive Engineers  
to - and -  
DISPUTE: Consolidated Rail Corporation

STATEMENT OF CLAIM:

Claims of Engineer G. E. Houtz on December 4, 6 and 7, 1987 for lost earnings account of improperly held out of service.

FINDINGS: The relevant facts in this case show that the Claimant completed his assignment on Thanksgiving Day, November 26, 1987. At 2:13 a.m. on November 27, 1987, he called the Carrier's Crew Dispatcher to mark-off duty, claiming that he was sick. He was told, at that time, that he was being held out of service until he provided a "doctor's note" as evidence of his illness. On December 2, 1987, the Claimant attempted to return to work, but was not permitted to because he did not provide the documentation from his doctor. Subsequently, on December 8, 1987, the Claimant did provide the requested documentation and he returned to work.

The Carrier has a basic responsibility to itself, its employees and, given its mission, to the public at large which requires that individuals in its active employment be both physically and mentally competent. Further, it is well-established that the Carrier has the right to withhold from the service, pending examination, any employee whose physical or mental condition and ability to work without detriment to himself, fellow employees and the public is placed in reasonable doubt.

Applying the above noted principles to the facts of this case, we must conclude and find that the Carrier did not act in a reasonable manner in this dispute.

There is no evidence in the record that the Claimant was not sick when he called the Dispatcher on November 27, 1987. The Carrier claims that, because of a manpower shortage at that time (November 27, 1987), and that, if the Claimant remained marked-off as sick for November 27, "he would need a doctor's certificate before he would be allowed to"


return to duty. Clearly, however, the Carrier has linked two unrelated issues here. It has shown no valid reason for requiring the Claimant to be examined. The Carrier's reason, i.e., that an inordinate number of employees had marked-off sick for November 27, 1987, is unrelated to the facts of this case. Moreover, its further claim that, if the Claimant's illness was so severe "as to cause him to mark-off", then it would have been appropriate for him to visit his doctor on that date and not wait until December 8, 1987 to do so, is equally unreasonable under the circumstances and does not have Agreement support.


In summary, there has been no showing that the Claimant has had a pattern of sick leave abuse or that the Carrier had other proper basis for requiring a medical certificate as to the Claimant's ability to safely perform his duties. There was no showing on the property of a specific rule that would support the Carrier's request for a medical certificate. For example, in one of the cases cited by the Carrier in support of its position, the Agreement Rule, in part, read: "The employing officer must be satisfied that the sickness is bona fide. Satisfactory evidence as to sickness, preferably in the form of a certificate from a reputable physician, may be required in case of doubt."

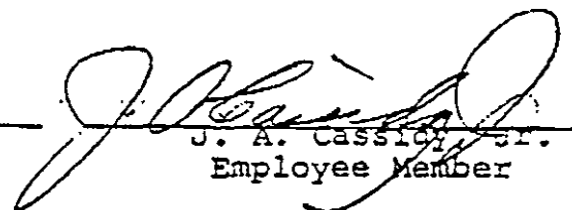
Clearly, given this, while the Carrier may have extensive latitude when deciding whether some form of verification is required, there is no evidence to support the Carrier's action here.

AWARD

The claim is sustained.

  
J. F. Glass  
Carrier Member

  
Eckenhard Muessig  
Neutral Member

  
J. A. Cassidy, Sr.  
Employee Member

Dated: 2/14/96