

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU  
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. That the Carrier violated the following rules, Rule 28-Seniority, Rule 34-Discipline, of our current agreement when they unjustly held Carman John Krug from work for an unreasonable amount of time after taking his physical for a return to work.

2. That accordingly, CSX Transportation, Inc. be ordered to compensate Mr. Krug for all pay and benefits lost (made whole) as a result of being held out of service for an unreasonable amount of time after taking his physical for a return to work.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The basic issue involved in this Docket has been before this and other Divisions of the Board many times. The Claim of the Organization involves an allegation of inordinate delay in returning an employee to duty following a medical release by his treating physician. Review of our Awards in similar cases discloses that the Board subscribes to the notion that undue delay on the part of the carrier in review of medical documentation, scheduling of necessary tests and/or examination by its medical staff, warrant compensation for the time the employee lost as a result of delays attributable to carrier inaction. Our Awards, though, have not established a standard on an appropriate time element for measurement of these delays. Instead the particular facts associated with each individual case have been reviewed and generalized tests of reasonableness have been applied to the facts developed.

In applying this reasonableness standard, the Board has recognized that both the employee and the Carrier share an obligation to expedite receipt and release of necessary medical documentation and information. The Board has also recognized that special cases require longer periods for review than more ordinary cases. Carriers have a basic obligation to insure that any return of an employee who had been absent because of illness or injury satisfied its medical standard. Importantly, though, in cases where the returning employee has satisfied accepted medical standards, the Board has concluded that delays in effecting a return to duty, within the control of a Carrier, are the responsibility of the Carrier.

Applying these considerations to this case the Board notes that Claimant presented Carrier with a return-to-work authorization on December 12, 1988. He was examined at Carrier's designated medical facility on December 15, 1988. The medical facility faxed the results of this examination to Carrier. However, the fax transmission was nearly illegible and, for unexplained reasons, did not contain drug screen results. Because of these "defects" Carrier scheduled a re-examination on December 19, 1988. The results of the second examination were placed in the mail and were not received by Carrier until December 27, and 29, 1988. On January 16, 1989, Claimant was returned to duty.

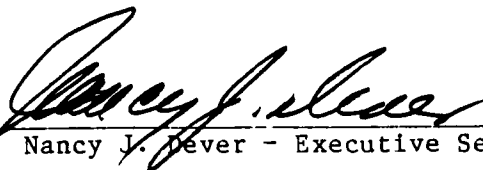
These facts demonstrate that all delays associated with Claimant's return to duty were within the control of, and basically the responsibility of, Carrier. For example, the receipt of an illegible fax could have been corrected by the prompt transmission of a legible report, rather than starting the entire procedure over, the election Carrier utilized here. Additionally, the conclusions of the second examination could have been dispatched in a more expeditious manner which would not have taken 8 and 10 days, especially since it was a re-examination resulting from a faulty fax transmission. Accordingly, in the circumstances here, the Board concludes that Claimant should have been returned to duty within five working days of the date Carrier received initial notice (even though it was illegible because of fax transmission problems) on December 15, 1988, of the results of his examination. He is entitled to be paid for all time lost between the day he should have been returned to duty and the date he was returned to duty.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1992.