

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24146
Docket Number TD-23839

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: { American Train Dispatchers Association
{ Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the American Train Dispatchers that:

(8) The Seaboard Coast Line Railroad Company violated the seniority rights of train dispatcher R. R. Miller, in refusing to permit him to protect his regularly assigned position beginning July 1, 1979, notwithstanding early notice by Mr. Miller of his intention to return to work July 1, 1979.

(b) The Carrier shall now be required to pay claimant train dispatcher Miller for each day withheld from his assignment: July 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, and 19, 1979.

OPINION OF BOARD: Claimant R. R. Miller, Assistant Chief Dispatcher on the 12:00 P.M. to 8:00 A.M. shift, was out sick effective December 8, 1978. On June 17, 1979 he notified the Chief Train Dispatcher that he would return to duty on July 1st, 1979 with his per. 681 physician's approval. On June 20, 1979 the Carrier's doctor requested further information from the hospital where Claimant had been patient during his absence, and set the Carrier's medic 81 examination of Claimant for July 18th. An earlier examination date was requested by the Organization at the end of June, but the Carrier continued to adhere to July 18th. On June 28th the Carrier received the hospital records which apparently were not fully up to date, and on July 18th Claimant was examined and restored to service a few days later on condition that Claimant "furnish followup report from person 81 physician in two months".

The Organization contends that the Carrier was given 14 days notice of Claimant's desire to return to work but waited too long to hold the medic 81 examination. It therefore claims 15 days pay from July 1st through July 19th, 1979 when Claimant should have worked. The Carrier asserts that the claimed cause of the illness, Blepharospasm or spasm of the eyelids, did not warrant such a long absence, and that the request for further medical documentation was justified. That by the end of June, 1979 the updated records had still not arrived, nor had they arrived by July 18th when the Carrier, to expedite matters, nonetheless went ahead with its own medical examination.

It breaks no new ground to hold that when an employe has been out of service for an extended illness the Carrier has a right to have the employe submit to a full medical examination and to supply the Carrier with full medical records, and that is not in dispute here. What is in dispute is whether the time for that examination was reasonably set. As the matter of the timing of the examination

in these cases is not one of novel impression, numerous awards have been cited by both parties, and these awards have been carefully reviewed. However, the starting point, as Referee J. Sickles observed in Award 20344 is "that each individual circumstance must be considered upon its own individual merits."

The Carrier's doctor may have been fully justified in feeling that there was something more than Blepharospasm involved in Claimant's absence and that fuller documentation was indicated. Nevertheless, there is nothing in the record to indicate that the July 18th date was necessarily set to accommodate that need. Indeed, the July 18th medical examination was held without the benefit of all of the updated medical records, and was characterized by the Carrier to the effect that its Doctor had "to thoroughly interview and examine" Claimant. Thus the Doctor's July 18th evaluation did not rely upon any updated medical documentation, but upon the information available on June 28th plus his own extensive examination. Put another way, if the updated documentation was not needed to conduct the examination on July 18th, it could also have been conducted any time after the partial information was available to the Carrier on June 28th.

Therefore the question becomes whether it was reasonable for the examination to have been scheduled after the June 28th arrival of the information but sometime before the actual examination on July 18th. The g-81 thrust of words is that five days after request is reasonable time for holding such examination, in this case measured from the arrival of the report on June 28th. Thus Claimant should be compensated for all time lost from the sixth day after June 28th, 1979 through July 19th, 1979.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee Involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

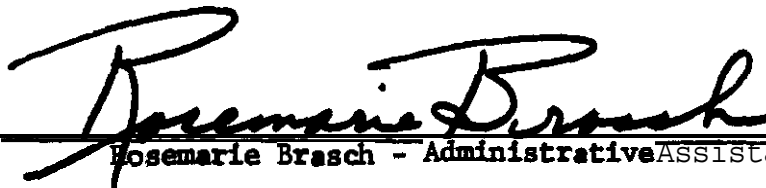
Claim sustained in accordance with the Opinion.

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By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

BY 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of January 1983.