

Referee Harold M. Weston

PARTIES Railroad Yardmasters of America
TO
DISPUTE: The Texas and Pacific Railway Company

STATEMENT Claim and request of Railroad Yardmasters of America that:
OF CLAIM:

Yardmaster J. G. Clements be allowed 6 days pay each week at the Assistant General Yardmaster rate at Texarkana beginning July 4, 1971 and until condition corrected account being deprived of service by Dr. E. T. Rouse, St. Louis.

OPINION The gist of this claim is that Yardmaster Clements, who had
OF BOARD: been off duty since February 19, 1971, because of tubercular
pleurisy, should have been returned to duty beginning July 4
of that year.

While both Drs. Harrell and Lindley, Claimant's own physicians, pronounced him fit to return to work on the claim date, Carrier's doctors decided, after examining Claimant, that he was not as yet qualified to resume service because of "a rather serious lung condition". On August 3, 1971, Dr. Harrell informed Dr. Rouse, Carrier's Chief Medical Officer, that the chronic pleural thickening in the right lower lobe was resolved and that Claimant's chest was clear. Dr. Rouse thereupon arranged to have Claimant reexamined by Dr. Wren, who previously had found his condition unsatisfactory. Dr. Wren examined Claimant on August 9 and authorized his return to work August 17.

As we observed in Award 2150, it is not arbitrary for management to require an employe to satisfy physical standards that are reasonable. Certainly, in this instance, Carrier's concern is understandable, particularly since it involves the return to the position of yardmaster with all its responsibilities of an employe who had been off duty due to a serious illness. We are in no position to determine that Carrier's physicians were in error in not returning Claimant to work on July 4 and we find no evidence of bad faith on Carrier's part.

We are of the opinion, however, that Carrier should have moved more swiftly after August 3 in view of Claimant's physicians' new reports as well as the fact that Claimant had already lost considerable earnings.

There is no evidence that an additional delay of two weeks and the attendant loss of pay were necessary under the circumstances and we will sustain the claim for the period from August 10 to 17, 1971. The record establishes no persuasive reason for not having Claimant's condition checked and reported by August 10 or for requiring Claimant to accept the full burden of the delay.

In balancing the respective interests of the parties, it is important that Carrier move expeditiously in arranging medical appointments and processing when delay works to the economic disadvantage of the employe.

FINDINGS:

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

The carrier and the employe involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.


The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained to the limited extent indicated above in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 6th day of July, 1973.