

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Award No. 4913  
Docket No. 4884  
94-4-92-4-21

The Fourth Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union - Yardmasters  
(Department  
(Chicago and North Western Transportation  
(Company

STATEMENT OF CLAIM:

"Claim and request that regular Yardmaster T. D. Burner be paid eight (8) days' pay at the yardmaster pro rata rate of pay for dates of June 2, 3, 4, 5, 6, 9, 10, and 11, 1991 account of being held out of service by the Medical Department after being released by his doctor to return to work on June 1."

FINDINGS:

The Fourth 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 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.

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

The Claim alleges that the Carrier was dilatory in returning the Claimant to work following a return to work physical. The Organization alleges that 22 days from the date of the physical to the date of return is well beyond the generally accepted five day standard. The Claimant took his return-to-work physical on May 21, 1991. The Claimant maintains that he was released by his doctor "to return to work June 1st." The Organization argues that since the Claimant was not approved to work by the Carrier's Medical Department until June 12, 1991, the Claimant is due compensation. The Carrier denies that there was any unnecessary delay in returning the Claimant to service and maintains that it handled the Claimant's case in a proper manner.

The burden of proof lies with the Organization to demonstrate that the Carrier's actions were unreasonable. There is nothing in the on-property record as to the Claimant's medical problem. There is no claim before this Board from the date of the physical examination on May 21 until June 1, 1991, the alleged date when the Claimant was released to return to work.

This Board has carefully reviewed the record. There is no evidence that the initial physical examination on May 21, 1991, resulted in a return-to-work release. The probative evidence indicates that the Carrier's Medical Department requested and received on June 3, 1991, the Claimant's physical examination results. The evidence indicates that only the Medical Department in Chicago was authorized to issue a return-to-work release. The Carrier's Medical Department reviewed the physical examination data on June 6, 1991, and determined that the information received was insufficient for a proper medical determination of the Claimant's ability to return to work. On that same date the Carrier advised the Claimant that additional information would be required for its evaluation of his medical condition. The additional information was received by the Carrier's Medical Department on June 11, 1991. On that date, the Carrier's Medical Department determined that the Claimant was qualified and could return to work on June 12, 1991.

In this Board's view five days is sufficient time to evaluate Claimant's medical results to determine his ability to safely return to work. It is imperative that the Claimant not be unreasonably denied employment. We have previously found that the five day standard is not an absolute time frame, but unless the probative record provides a rational justification for delay, it is a reasonable time frame (Public Law Board No. 4093, Award 8).

In this case, the Carrier acted on June 3, 1991 to obtain the results and on June 6, 1991 to advise that additional information was necessary. There is no dispute on the property over the Carrier's justification in requesting additional medical information to reach its decision. The Carrier stated that to determine if the Claimant was medically qualified, "additional information was necessary." This was not refuted on the property and stands as fact. This Board must conclude that the Claimant's medical records were insufficient to permit a safe return to work.

This Board finds no probative evidence about the nature of the additional medical information requested or the Carrier's need for the material in making its determination. Certainly the Carrier is permitted a reasonable length of time to reach a decision and five days was clearly insufficient as additional information was needed (Fourth Division Award 4561). Based on the record, the Carrier acted in a timely manner to initially review the Claimant's medical

results and thereafter acted immediately upon receipt of the additional medical information to return the Claimant to work. The Organization has not met its burden of proof to demonstrate that Carrier's request for additional information was unreasonable or the delay unnecessary. Until the Carrier received its additional medical facts, it was not required to prematurely return the Claimant to work.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

Attest: *Catherine Loughrin*  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.