

SPECIAL BOARD OF ADJUSTMENT NO. 1116

Case No. 2 Award No. 2

PARTIES Brotherhood of Locomotive Engineers
to and
DISPUTE: CSX Transportation

STATEMENT OF CLAIM:

Claim for payment of 23 days pay at yard rate from January 19, 1998, through February 11, 1998, for being withheld from service as an Engineer in violation of BLE Articles G-s-2, G-x-5, G-m-12, G-m-13.

FINDINGS: The Claimant was employed by Conrail as a Brakeman/Conductor on March 13, 1986. On September 21, 1989, he was promoted to Locomotive Engineer, and about five years later, on May 30, 1998, he accepted a Yardmaster position with Conrail. He retained his Engineer Seniority pursuant to Article S-e-5 of the Agreement. In early January 1998, he resigned from his Yardmaster position to return to a Locomotive Engineer position. On January 12, 1998, he took a physical at a Conrail approved Medical Facility in compliance with Conrail requirements and those of the Federal Government regarding Locomotive Engineers. He "passed" the physical.

On January 14, 1998, the Claimant received a Temporary Engineer's certification. However, the following day, January 15, the Claimant was told he could not engage in his profession until he was cleared by the Conrail Medical Department.

The record shows that the Claimant then made a number of contacts with the Conrail Medical Department in an effort to be medically cleared. On February 5, 1998, he received another physical examination in which he once again was found to be fit for an Engineer position.

On February 10, 1998, he was told he could return to work. On February 12, 1998, the Claimant began a one week Engineer "crash course." The Organization contends that the Claimant was improperly held from service from January 19, 1998 to February 11, 1998. The Claimant claims eight (8) hours pay for each of those days for a total of twenty-three (23) days of wages.

It is not arguable that the Carrier has the right to require an examination by its Medical Department prior to allowing the employee to perform his Engineer duties. In this case, because of past medical problems related to the Claimant's back, in effect, it required a second examination. This action was not an unreasonable one, given the circumstances. However, the Carrier also is required to move with reasonable speed. It clearly did not do so in this instance. Accordingly, the only question remaining is what would be a reasonable time to elapse before the medical examination was scheduled; the results announced and the Claimant's return to work.

The record shows that the Claimant began calling the Carrier's Medical Department on January 19, 1998 to schedule his medical examination. Even though he made repeated calls to the person responsible for the scheduling, she did not return his calls until 5:00 p.m. on January 22. At that time, he was told that an appointment would be made for him. However, he was not called again until January 26 with an appointment for February 11. The Claimant then called the Carrier's Medical Department on his own and set the appointment for February 5, some six (6) days earlier. After being examined on February 5, he was told on February 10 that he could return to work.

The record of this case is barren of any justification for the Carrier's delay in scheduling the second medical examination. Numerous Awards have held that the Carrier must exercise the right to examine an employee in a reasonably expeditious fashion. These Awards show that a reasonable time in which to examine an employee and make the results known vary and must be decided on the circumstances of each case. See Second Division Awards 5974, 6278 and 6753; and Third Division Awards 18797, 19484, 21065 and 21560.

In this case, a total of 23 days are involved. We find a reasonable time for completion of the examination and notification would have been January 26, 1998. Therefore, the Claimant is entitled to back pay at the straight time rate for the period beginning on January 27, 1998 through February 11, 1998.

AWARD

The claim is sustained to the extent noted above.

S.R. Friedman
S. R. Friedman
Carrier Member

E. Muessig
Eckehard Muessig
Neutral Member

R. W. Godwin
R. W. Godwin
Organization Member

Dated: 6-19-2000