

Award No. 3157
Docket No. 2936
2-PRR-MA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That J. J. Shaffer, Machinist, Dennison, Ohio, Enginehouse was improperly denied payment for time spent travelling and waiting for physical examination, on June 25, 1956.

2. That the Carrier be ordered to compensate J. J. Shaffer, twelve (12) hours' pay at the applicable rate, for the time spent in connection with this examination.

EMPLOYEES' STATEMENT OF FACTS: Machinist J. J. Shaffer, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at the carrier's Dennison, Ohio Enginehouse, with a third shift tour of duty, Saturday and Sunday rest days.

On June 11, 1956 the claimant was given his regular periodical physical examination by Dr. Hines, Uhrichsville, Ohio.

The regional medical officer ordered the claimant to report to Columbus, Ohio, for another physical examination.

The claimant reported at Columbus, Ohio, as directed by his foreman, and was examined by Dr. V. Stephens, located at Buttles and High Streets, Columbus, Ohio.

The time consumed by the claimant to make the round trip of 200 miles was twelve (12) hours.

changed in the manner provided in the Railway Labor Act as amended.”

The carrier asserts, therefore, that since the applicable agreement cannot be changed or revised by the unilateral action of one of the parties thereto or by an award of your Honorable Board, the instant claim must be denied in order to preserve and maintain the intent and application of Rule 8-K-1.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act, to give effect to the said agreement, which constitutes the applicable agreement between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of “grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions.” The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the employes in this case would require the Board to disregard the agreement between the parties hereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has shown that the applicable agreement has not been violated in the instant case and that the claimant is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the employes in this matter.

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 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 were given due notice of hearing thereon.

Claimant Shaffer was given a physical examination on June 11, 1956, which raised a question as to his need for a hearing aid. The carrier's medical officer referred the case to a specialist and on June 25, 1956, the claimant went to Columbus, Ohio, returning the same day after being examined, and worked his next regular tour of duty. Claim is now advanced for time consumed travelling and waiting from departure until return at time and one-half rate.

The organization contends that Rule 8-K-1(a) has been violated. It provides "Except as * * * in * * * (c) below, periodical physical examinations shall be given during the employes' regular tour of duty where * * * practicable to do so."

Rule 8-K-1(c) provides "When it is not practicable to give periodical physical examinations during the regular tour of duty * * * employes shall not be paid for the time engaged in connection with examinations or re-examinations given outside the hours of their regular tours of duty."

We conclude that the examination given claimant at Columbus, Ohio, repeated and went over the same ground covered in the original examination. It was a re-examination and during the employe's regular tour of duty "it was not practicable to do so".

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: H. J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3157

Award No. 3157 ignores the fact that the examination on June 25, 1956 was not a periodical examination within the terms of the controlling agreement.

Therefor the claimant should have been compensated as claimed and we submit that said award does not constitute a valid application of the controlling agreement.

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink