

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation violated the existing controlling Physical Examination Agreement of January 1, 1943, former System Federation No. 103, when on June 30, 1978, Machinist C. T. Smith was scheduled for a physical examination.
2. That, accordingly, Machinist C. T. Smith be compensated seven (7) days pay at the pro rata rate for the time lost June 30, through July 10, 1978, inclusive.

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 waived right of appearance at hearing thereon.

On June 27, 1978, Machinist C. T. Smith held an assignment as a machinist at carrier's Collinwood Diesel Shop. On that date, he met with Shop Superintendent D. E. Comor to discuss his attendance record. On June 20, 1978, claimant had returned to work after a 14-day illness. Claimant presented a doctor's slip that stated that he had been under a doctor's care from June 7, 1978, to June 20, 1978, and that he was now able to return to work. Carrier did not question claimant's ability to return to work at that time.

On June 27, 1978, during the discussion about claimant's excessive absenteeism, claimant stated to the superintendent that he had been under a doctor's care for an upper respiratory problem and that he believed his ailment was attributable to his work environment. The superintendent immediately ordered claimant to be examined by a company doctor. He was sent to the company doctor on June 30, 1978. The company doctor held claimant out of service and instructed him to produce a detailed report of his health from his personal physician. When this was produced, claimant would then be examined. If found fit, he would return to work.

Claimant returned to the company doctor with the required information on July 10, 1978. He was examined, found fit for duty, and returned to work on July 11, 1978. Claimant missed six working days and one holiday as a result of being held out of service, pending his examination for fitness. He returned to work on July 11, 1978. The organization filed a claim for 56 hours pay at \$7.63 per hour, citing a violation of the understanding relating to physical examinations. The claim was denied at every level and has progressed to this board for resolution.

The union asserts that carrier violated the agreement when it required claimant to submit to a physical examination with no sound basis for such a requirement. It was not proper to require a man to submit to an examination because of his attendance record and then hold him out of service until he produced a doctor's statement, when, just ten days before, he submitted a doctor's statement that he was fit for work. The organization argues that carrier utilized this device as a form of discipline to penalize claimant for his attendance problem, not out of concern for his health.

Carrier argues that claimant, by his own statement, indicated that he thought his respiratory problem was caused by his work environment. When the superintendent heard this, he acted properly in the interest of the carrier, as well as the man. He ordered a physical examination. The medical doctor declared claimant unfit for duty on June 30, 1978. He told claimant to obtain a detailed explanation of his condition from his personal doctor. When he returned with it, he would then be examined, and, if found fit, he would return to work. Claimant chose not to return for the examination until July 10, 1978. He could have returned at any time and been examined if he obtained the needed information. He chose to stay out of work for the ten-day period. He was not forced out by the Carrier.

The arguments presented by carrier in this case are persuasive. The record reveals that claimant did make the statement about his problems being job related. He was given a chance to return for the second examination at his discretion. Carrier was justified in ordering the claimant examined.

Claimant cannot, given the facts of this case, be heard to complain about carrier's action. The delay in going back to work was caused by his statements and his failure to return immediately for an examination.

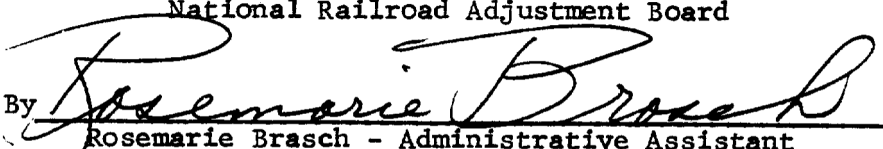
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of October, 1980.