

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister 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 be ordered to restore Machinist James D. Terry to service and compensate him for all pay lost up to time of restoration to service at the prevailing machinist rate of pay.
2. That machinist James D. Terry be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost during this period, in accordance with Rule 7-A-1 (e) of the prevailing Agreement which was effective May 1, 1979.

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 employees 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 Claimant, Machinist James D. Terry, entered the employ of the Carrier on March 18, 1947. In November of 1979, the Claimant marked off on disability and has not worked since. In October of 1980, the Carrier sought from the Claimant's personal physician certain information relative to the doctor's diagnosis, treatment, and prognosis of Claimant's illness. On December 10, 1980, the Carrier, not having received what it deemed satisfactory medical evidence from the Claimant's attending physician scheduled an examination for the Claimant on December 18, 1980, with a physician assigned to its medical department in Cleveland, Ohio. By letter dated December 17, 1980, the Claimant informed the Carrier's General Superintendent that he was still under his personal doctor's care and was unable to drive or fly to Cleveland. The Claimant was then living in Florida.

Subsequently, the Claimant was sent a notice to attend a trial on January 12, 1981, wherein he was charged with insubordination in that he did not appear for the examination on December 18, 1980, and that he had failed to release required medical information. The Claimant was not present at the trial, and he was subsequently dismissed from the service in all capacities.

This Board has, in the past, clearly and consistently held that when a question arises concerning the disability of an employee, the Carrier has a firm right to require an employee's cooperation in the securing of current, medical information and to submit to a physical examination conducted by a physician chosen by the Carrier. The underlying basis for such rights is to afford the Carrier the opportunity to properly ascertain the physical fitness of an employee.

This Board recognizes the Carrier's concern about the Claimant's actual state of health. Nevertheless, we deem the action taken as premature and do hereby remand this dispute to the Carrier with this instruction. The Carrier will make one final attempt via certified mail addressed to Claimant at his last known Florida address, return receipt requested, to notify Claimant Terry sufficiently in advance to appear for an examination at the Carrier's medical office on a certain day. In the event the Claimant fails to appear for and submit to the scheduled examination, this Board hereby retains jurisdiction, and having no alternative, will order this dispute to be dismissed with prejudice.

A W A R D

Claim remanded to the property for handling consistent with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division .

Attest: Executive Secretary
National Railroad Adjustment Board



Nancy J. Dever Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1983.