

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

(International Association of Machinists and Aerospace
Workers

Parties to Dispute: (

(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Carrier unjustly held Machinist A. J. Rankin (hereinafter referred to as Claimant) from service on January 27, 1984 to February 13, 1984, due to a physical examination thereby violating the provisions of Rule 28 (a) of the Maintenance of Way Department Agreement.

2. That, accordingly, the Carrier be ordered to compensate Claimant for wage loss from January 27, 1984, to February 13, 1984. (twelve (12) working days)

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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, a Machinist, is employed by the Carrier at its facility at Alturas, California, and holds seniority in the Shasta Division.

The Claimant had been out of the Carrier's service for six (6) months due to injuries which he sustained. In September, the Carrier notified the Claimant of his release to return to work with an adjustment period to allow him to gradually attain a physical condition so that he could work without restrictions. Upon the advice of the Carrier's Chief Medical Officer, the Claimant was instructed by the Regional Engineer to have his attending physician submit an updated medical report to the Carrier's Chief Medical Officer sixty (60) days from his return to duty.

The Claimant returned to the Carrier's service on September 26, 1983. After sixty (60) days (by November 25, 1983), the Carrier did not receive the updated medical report. More than a month after the medical report was required to be submitted, by Certified letter, dated January 3, 1984, the Regional Engineer reminded the Claimant to have his doctor submit the updated medical report to the Carrier's Chief Medical Officer. Since no such report was received by January 27, 1984, the Carrier removed the Claimant from service until he provided the Carrier with an updated medical report on his physical condition.

The Claimant was then examined by his doctor on February 3, 1984, and the results of the examination were received by the Carrier on February 7, 1984. The following day, on February 8, the Claimant was informed that he was to return to duty. He returned to duty on February 13, 1984.

The Organization contends that the Carrier "unjustly treated" the Claimant in violation of Rule 28(a) by removing him from service from January 27, 1984, to February 13, 1984, because it failed to give him a Form which was required to be filled out by the doctor who was to examine him.

After carefully examining the record, the Board concludes that the Claim must be denied. Upon the Claimant's return to service in September, 1983, he failed to comply with his Supervisor's instruction to provide the Carrier's Chief Medical Officer with an "up-dated medical report" so that his condition could be evaluated to remove the restrictions that had been placed on his return to service. It should be pointed out that when the Claimant returned to service in September, 1983, he did so subject to rest breaks and a maximum lifting restriction. In light of these restrictions, it was reasonable for the Carrier to require the Claimant to submit to a physical examination within sixty (60) days of his return for a reassessment of his physical condition, in order to determine whether the restrictions on his service should be continued. Within sixty (60) days, or by November 25, 1983, the Claimant had failed to take a physical examination.

The Claimant persisted in his failure to submit to a physical examination within twenty-four (24) days after January 3, 1984, when the Carrier again notified him of its requirement concerning an up-dated physical examination. Indeed, the Claimant failed to give the Carrier any indication that he would comply with its requirement.

The Organization contends in effect that the Claimant did not submit to a physical examination because the Carrier did not provide him with the "required form" which was to be completed by the examining physician. The Form in question is entitled "Return-To-Duty Status," which the Carrier is not required to give to an employee before submitting to an up-dated physical examination. The Form is designed to expedite the attending physician's report should he desire to use it. In order to satisfy the Carrier's requirement, the Claimant could have contacted his doctor, submit to a physical examination by the doctor and have the results of the examination sent to the Carrier's Chief Medical Officer.

The Claimant treated the Form in an arbitrary manner, if, as the Organization contends, the Form was not provided to him by the Carrier before he would submit to a physical examination. The Board cannot conclude that the Claimant requested the Form from the Carrier at the Alturas facility but it was denied because, as it is contended by the Organization, a Supervisor was required to authorize its issuance. The Board infers from the record that the Claimant did not request, nor was he refused, the issuance of the Form. Moreover, assuming the Claimant's version to be a fact, it is puzzling as to why he did not request the Form from a Supervisor from September 2, 1983, to January 27, 1984. Indeed, even after being removed from service on January 27, 1984, it was only until the Carrier sent him a Form, that the Claimant decided to submit to a physical examination. After he did so and the results were sent to the Carrier's Chief Medical Officer, the Claimant was immediately restored to service.

Furthermore, the record warrants the conclusion that the completion of the Form was not a condition that was required by the Carrier. In a letter dated September 13, 1983, the Regional Engineer notified the Claimant, in relevant part, "to submit an updated medical report to Dr. Meyers 60 days from your return to duty." (Emphasis added). By letter dated January 3, 1984, the Carrier "by J. F. Anderson" sent a letter to the Claimant referring to the September 12, 1983 letter, which was attached and stated: "* * you should arrange to have your doctor submit an updated medical report to Dr. Meyers as soon as possible." (Emphasis added). The record discloses that the Carrier instructed the Claimant to submit an "updated medical report" rather than the Form entitled "Return to Duty Status." In any event, no such report was submitted by the Claimant.

The focal point of the instant dispute is not the delay in obtaining the Form which the Claimant could have requested and obtained, but failed to do so between September 13, 1983, and January 27, 1984. Rather, it is the Claimant's failure to comply with the reasonable instructions of the Carrier to submit to a physical examination. It is to the Carrier's credit that the Claimant's failure to comply with its reasonable instructions was not treated as a disciplinary matter. Clearly, the Claimant was not "unjustly treated" by the Carrier. Accordingly, the Carrier did not violate Rule 28(a) of the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1987.