

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

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE: (

(The Western Maryland Railroad Company

STATEMENT OF CLAIM:

1. That the Western Maryland Railway Company violated the contractual rights of the carman claimant herein listed. This carman claimant had his contractual rights to perform extra relief work violated whenever the carrier required a physical examination before resuming said extra relief work. The claimant has been monetarily and contractually deprived and the organization has been deprived of its contractual rights under the provisions of Rule 26 of the controlling Agreement.

2. That accordingly, Carman George V. Plauger, Jr. be awarded twenty (20) days remuneration at the carman's straight time rate of pay and that all benefits which claimant lost relative to Railroad Retirement be adjusted to indicate employment during the period held out of service.

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 employes 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.

Claimant was a furloughed Carman at Elkins, West Virginia. From June 4 to July 27, 1985, Claimant had availed himself of the opportunity of performing relief and/or extra work in accordance with the provisions of Rule 26 of the Agreement which authorizes the use of furloughed employees to perform extra and relief work. After July 27, 1985, the need for such service temporarily ceased.

Subsequently, on or about January 28, 1986, Claimant indicated a desire to again perform extra and/or relief work under Rule 26. However, because he had not worked for Carrier in the preceding six months, Carrier insisted that he take and pass a physical examination before resuming the performance of extra and/or relief work. The examination was scheduled for and given on January 31, 1986. The results of the examination were issued and Claimant was approved for return to service on February 18, 1986. He eventually reported for duty on February 24, 1986.

The crux of this dispute centers around the insistence by Carrier that a physical examination was required before Claimant could resume Rule 26 extra work, and secondly, that the subsequent delay in making the determination that Claimant was, in fact, physically qualified to resume duty was an arbitrary delay on the part of the Carrier.

On the first issue, it is too well established to require numerous citations relative to Carrier's right to require its employees to submit themselves for physical examination before returning them to duty. In fact, one of the many Awards cited by the Organization in this case is sufficient to make this point.

In Second Division Award 6629, we held:

"The issue before this Board for determination is not one of first impression. Second Division Awards 6331, 6278 and 6363, involving the identical parties now before us, have all decided the issue at hand. Therein it was held that the Carrier has the inherent right to require employees to submit themselves for physical examination before returning them to work...."

See also Second Division Awards 6569, 6700 and 6704.

On the second issue, that is, the period of time involved between examination and release of results, this too is a well settled issue. Our Board has consistently ruled that a Carrier is allowed a reasonable time to evaluate the results of a physical examination. In this regard, there is no hard and fast rule defining reasonable. Some examinations are more involved than others. Some examinations require more testing and evaluating than others. Weekends, rest days and holidays play a part in the determination of reasonable. Here the time involved was from January 31 to February 18, 1986 - a period of 19 calendar days. Here there is no indication of extraordinary testing or evaluating. In short, there is nothing here to indicate that this examination should have required any more than seven (7) calendar days to be accomplished. We so rule, and in doing so we embrace the opinions expressed in Awards 6569, 7472, 8113 and 10363 of this Division.


Therefore, Claimant is entitled to 8 hours pay at the pro rata rate for each workday that he could have worked during the period from February 7 to February 18, 1986. As for the time from February 18 to February 24, 1986, the record indicates that this delay occurred as a result of Claimant's own actions for which Carrier cannot be held liable.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1986.