Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6746
SECOND DIVISION Docket No. 6515
2-CRR-MA-'74

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Clinchfield Railroad Company

Dispute: Claim of Employes:

1. That under the terms of the Agreement, Machinist J. D. Knicely was unjustly and improperly held out of service April 10 and 11, 1972.

2. That accordingly the Clinchfield Railroad Company be ordered to compensate him in theamount of eight (8) hours pay at the straight time rate for each of the dates claimed. And further be ordered to discontinue this practice of requiring employes to fill out and sign forms MED-1 and MED-2, releasing past, present and future medical history.

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.

Claimant was off from work 14 days for illness due to mumps which he said his family had been sick with for the past week or so, Employees' Exhibit A-1. The Carrier's records disclosed that claimant was off due to illness for 103 days in 1971 and for 28 days out of 70 work days in 1972 preceding the illness in this case. The claimant states that the absence in 1971 was the result of surgery and that absence in 1972 was charged to vacation.

This claim resulted when claimant returned on April 4, and was permitted to work April 4, 5 and 6. He was off on April 7 to take his son to the hospital; Carrier asserts that claimant reported off sick on the 7th. Carrier also asserts without contradiction that claimant left during his work hours on a number of occasions, explained by the claimant as due to kidney stone attacks.

The Carrier contends that claimant was permitted to work 3 days inadvertently and on April 6 was informed that he would be given a reasonable time to have his doctor fill out a medical report form MED-9, Carrier's Exhibit No. 10, and in the meantime could continue to work. The Organization has argued that the requirements of MED-9 are an invasion of claimant's rights; that it was a new form, the requirement for which the Organization had no prior knowledge or information. Claimant did not have the form completed by his doctor and was then advised that he could not return to work until he would be examined by the Carrier's doctor at the Carrier's expense. An appointment was made for April 11, which claimant refused to keep because it was on one hour's notice. The Carrier states without contradiction that claimant lived 5 blocks from the doctor's office and had ample time. Nevertheless, an appointment was made for April 12. Claimant kept this appointment, was examined and returned to work without further loss of time.

The Organization's first claim letter stated a twofold purpose; a time claim and to abolish the practice of requiring a medical report, Employees' Exhibit A-1, Carrier's Exhibit 1. In its letter to the highest officer reference is made only to a time claim, Employees' Exhibit A-9, Carrier's Exhibit 7. The Carrier contends that the Organization abandoned the claim to abolish the practice of requiring medical forms. The Organization states that it referred only to the time claim finally, because the Carrier had not replied to this item in its answers. In addition, the Organization has asserted that the Carrier discriminated against claimant in violation of Rule 12. The Agreement contains no Rule with reference to procedure in case of illness or requirement for medical reports or physical examination.

We find that this Board has no authority to issue a declaratory judgment or to grant injunctive relief, and we concur with the reasoning set forth in Second Division Awards 6160, 6162 and others to the same effect, including PLB NO. 889 by Referee John H. Dorsey.

We find that the Carrier did not discriminate against the claimant. The Organization conceded in its Rebuttal on page 5, that the Carrier has the right to question the physical condition of an employe. The information required by MED-9 is a standard doctor's report, is not an invasion of rights and is not discriminatory. We agree with the Carrier's right to a physical examination or a doctor's report although it is not provided for in the Agreement, Third Division Award No. 18317, Awards 6269, 6233 and 5641. Furthermore, it is common knowledge that "mumps" is contagious and may result in serious complications in an adult male.

The timing of the Carrier's request for a doctor's report, however, provides an arguable consideration; especially when the requirement was new on the property and prior information concerning it had not been provided to either the employes or to the Organization. Although the Carrier acted promptly to make an appointment for the physical examination and did so within a reasonable time after the claimant returned to work, notice of one hour was not reasonable. The claimant was assigned to a shift from 11:00 P.M. to 7:00 A.M. and could not reasonably be expected to be available on one hour's notice when he was on his own time. On the other hand, the need for the examination resulted from the failure of the employe to obtain the doctor's report. Under all the circumstances, the claimant should not be required to suffer the entire burden for a result which was partly due to the Carrier's inadvertance. We find that the claimant should be entitled to be compensated for 8 hours at the straight time rate.

A W A R D

Claim Disposed Of As Stated Above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July, 1974.