

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: { International Association of Machinists and
 { Aerospace Workers
 { Staten Island Rapid Transit Operating Authority

Dispute: Claim of Employees:

1. The Staten Island Rapid Transit Operating Authority violated the controlling agreement by arbitrarily suspending Machinist Peter F. Raggi from service beginning November 6, 1978 and continuing through December 5, 1978.
2. Accordingly, Machinist Peter F. Raggi should be compensated for all wages and benefits lost as a result of the improper suspension and his record cleared.

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 were given due notice of hearing thereon.

When the Claimant assertedly refused to permit the Carrier's physician to draw blood samples and take X-rays (which the Carrier felt were necessary to verify the Employee's reported inability to perform duties) the Employee was charged with insubordination and malingering, and he was directed to report to a hearing concerning said charge.

Subsequent to the hearing, the Employee was suspended for thirty (30) days.

The Carrier contends that the Claimant reported off as "sick" solely to avoid the imposition of certain mandatory fines levied under a "Taylor Act" action, and that the facts and circumstances of record clearly show the Employee's intent in this regard.

In his testimony at the investigation, the Claimant conceded that he refused to permit the Carrier's physician to include in his examination blood samples and an X-ray, which the Carrier felt were necessary to verify the Claimant's asserted physical condition concerning his ulcer. When asked if he felt that the blood test and the X-ray would constitute a hazard to his health, he stated, "very well might".

The Claimant's reluctance was explained in medical terms by the Claimant's personal physician, who outlined the Employee's renal problems and continued dialysis. Nonetheless, the Claimant admitted that he would permit X-rays when a "definite emergency" was involved. Moreover, the testimony demonstrated that on a number of occasions throughout the year the Claimant was subjected to X-ray pictures and to blood drawing.

Certainly, this Board would not condone any requested Carrier action which would place an employee in a serious health jeopardy, or would constitute a real hazard to his wellbeing. At the same time, we are quite familiar with the often expressed concept that a Carrier has a very broad right to obtain medical information about its employees from a physician of its own choosing, and that disciplinary sanctions may be imposed if an employee refuses to cooperate. See, for example, Award No. 48, *Lines East*, Special Board of Adjustment No. 589.

The Board has considered the transcript at length in this case. We feel it a mandatory obligation to assure that we are not sanctioning a disciplinary action which resulted from an activity taken by the Employee based upon a real and objective appraisal that compliance was harmful to his health. Based upon the entire transcript, we are unable to find a valid basis for such a conclusion, and accordingly, we will deny the claim.

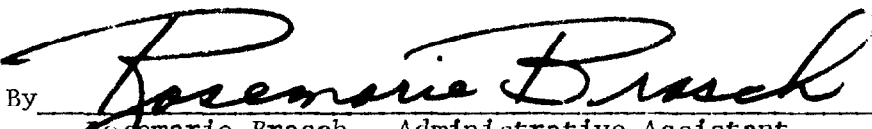
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of March, 1982.