

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Port Authority - Trans Hudson Corporation

Dispute: Claim of Employees:

1. That under the current Agreement the Port Authority Trans-Hudson Corporation unjustly ordered Electrician William Dietz to submit to a physical reexamination by the Medical Department on March 1, 1983; and consequently unjustly assessed him a disciplinary suspension from service effective from April 22, 1983 to May 22, 1983.

2. That accordingly, the Port Authority Trans-Hudson Corporation be ordered to restore Electrician William Dietz to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole and expunge his record.

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.

The Claimant, William Dietz, an Electrician for the Carrier, was assessed a thirty day disciplinary suspension effective April 22, 1983 to May 22, 1983 for failure to report for a physical as ordered by the Carrier on March 1, 1983. Initially, the Claimant was given a six month suspension to begin January 21, 1983 as a result of a hearing held January 12, 1983. This was subsequently reduced to a one month suspension effective February 1, 1983 to March 2, 1983. As a result of the failure to report for the physical scheduled on March 1, a new hearing was held on April 8, 1983 which resulted in the suspension of April 22, 1983 through May 22, 1983. In essence, the Claimant is charged with insubordination and that is failure to carry out a proper order of the Carrier.

The Organization argues that the Claimant was on sick leave and also concurrently on suspension through March 2, 1983. Nothing in the rule, which is Article XIV Section C of the Agreement states that any employee would have to have another physical. It was the Organization's contention that the language allows the Carrier to conduct another exam only when an employee has been released to return to work. The Organization states that the Carrier did not bear their burden in this case, and that in any case they do not have the right to order this employee to take the physical.

The Carrier argues that the language in Article XIV Section C gives it the unilateral right to schedule medical exams for all employees to be determined by the Carrier and notes that none of the suspensions were actually served and that the Claimant was actually on sick leave during the time in question. The suspensions were assessed, but they were held in abeyance until the Claimant returned to work.

The language in question is as follows: Article XIV Miscellaneous C - "Medical examinations conducted by PATH shall be required by all employees as determined by PATH. Employees who are found by PATH to be medically unqualified to perform the duties required by their position shall be placed on sick leave until they become medically qualified, at which time they may be required to requalify before being returned to service." The question before the Board is: Does the Carrier have the right to order the Claimant to take a physical exam at a time and place to be determined by the Carrier? The Claimant, during the investigation, stated that it was his position that he did not have to attend this physical exam because he was on suspension at time and that the Carrier had no rights over him while he is on suspension. As noted above, the Organization stated that the second sentence in Article XIV Section C requires only that employees submit to a physical upon their return to work. The Board cannot find substantial evidence supporting these contentions either in the record or in its reading of the Rule. The first sentence of Article XIV Section C is very clear. Employees are required to take physical

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exams as determined by the Carrier. The second sentence is in the nature of a further definition of that right and allows the Carrier to require employees to submit to return-to-work physicals in order to requalify for service before they would be returned to service. Under the circumstances, and after a careful review of the record, the Board finds that the Claimant did fail to carry out a reasonable and lawful order by the Carrier and the discipline given was not so unreasonable that the Board would substitute its judgement for the Carrier's. Therefore, the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 4th day of September 1985.