neutral medical authority; neither one was accompanied by a dissenting opinion from a competent doctor. Carrier points out that Claimant submitted a dissenting opinion from a doctor on January 23, 1985, six months after he was withheld from service. Claimant then returned to service on March 1, 1985. Carrier later authorized payment for time lost due to the delay between the date that the dissenting opinion was submitted and the date Claimant returned to service.

Carrier then disputes the Organization's contention that some of Claimant's physical problems had not interfered with his job performance. Carrier contends that the physical examination showed that Claimant was having medical difficulties and should be assigned to light work. Moreover, Carrier asserts that it requested a medical opinion of Claimant's condition long before Claimant was removed from service. Carrier asserts that any undue delay and lost wages are caused by Claimant.

Carrier additionally argues that it has the absolute right to examine its employes. Carrier asserts that this Board has upheld this right; moreover, this Board has found that time limits, such as those in Appendix I, are strictly enforceable. Because Claimant did not comply with the Appendix I time limits when making his appeal, Carrier contends that the Claim is untimely. Carrier further asserts that the Organization altered this Claim when it submitted notification of intent to file an ex parte submission to this Board; the Organization added a request that Claimant should be compensated for all lost rights, benefits, and privileges. The Carrier asserts that the Claim is without merit, seeks a remedy beyond what is provided in the Agreement, and should be denied in its entirety.

This Board has reviewed the evidence in this case, and we find that the Carrier has a right to determine that the health of its employes are such that they will not become hazardous to themselves or to other workers. Hence, when the Carrier required the Claimant to be physically examined on July 25, 1984, the Carrier was fully within its rights.

This Board also finds that the Claimant was properly held out of service beginning July 26, 1984, because of the results of said medical examination relating to his hearing, blood pressure, and heart.

In January, 1985, Claimant furnished his personal physician's report. Once the January 23, 1985, report was received and reviewed by the Carrier, the Claimant was allowed to return to service on March 1, 1985. The Carrier paid the Claimant for the period January 24, 1985, until February 28, 1985, because of the delay in reviewing the physician's report.

The record is clear that the Claimant did not comply with the Carrier's instructions. It took the Claimant six months to bring in a dissenting opinion, and he was then returned to work. The Carrier made him whole for the Carrier's delay. On the facts of this case, this Board cannot find that the Carrier violated any rights of the Claimant. The Claimant dragged his feet with respect to the second opinion. Hence, the Claim must be denied.

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 10th day of June 1987.

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11274
SECOND DIVISION Docket No. 11063
2-BN-EW-'87

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Burlington Northern Railroad Company

Dispute: Claim of Employes:

1. That in violation of the governing Agreement, the Burlington Northern Railroad arbitrarily and capriciously removed Electrician William J. Jones from its service prior to receiving the results of his routine physical examination.

2. Even after receiving the results of Electrician Jones' physical examination, which showed no changes as compared with the examination taken at the time of his hiring some five (5) years earlier, the Burlington Northern refused to allow him to resume service.

3. Accordingly, the Burlington Northern Railroad should be directed to compensate Electrician William J. Jones for all time that he was improperly withheld from service. The Burlington Northern should be further directed to make Mr. Jones whole for any and all other rights, benefits or privileges which should have accrued to him had he remained in service and of which he was deprived between July 26, 1984 and March 1, 1985.

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 were given due notice of hearing thereon.

Claimant was employed as an Electrician by Carrier at its Vancouver, Washington facility. On July 23, 1984, Claimant was instructed to appear on July 25 for a medical examination by a Carrier physician; Claimant also was examined by an eye specialist on July 27. Effective July 26, 1984, Claimant was withheld from service pending the result of the examination; on August 14, 1984, Carrier advised Claimant that he was being withheld from service indefinitely. The Organization then subsequently filed a Claim on Claimant's behalf, charging that Carrier wrongfully withheld Claimant from service between July 26, 1984 and March 1, 1985.

The Organization contends that in the report of Carrier's physician on the July 25 examination, there is no reasonable ground for removing Claimant from service. The Organization points out that of the five "problems" identified in the report, three existed prior to Claimant's employment, the fourth occurred during Claimant's service with Carrier and Claimant completely recovered, and the fifth indicated a mild possibility of early angina symptoms. The Organization points out that the first four existed during three previous physical examinations, but did not cause Claimant to be removed from service. The Organization argues that the physician's recommendations bear no weight as to Claimant's ability to perform his duties; the physician's concerns about Claimant's work safety are not supported by any evidence.

The Organization further asserts that both the report of Claimant's eye examination and the report from Claimant's personal physician indicate that there has not been any change in Claimant's physical condition during his service with Carrier. The Organization argues that the only significant incident during Claimant's service was an on-duty injury to his back and arm; Claimant completely recovered from this injury. Moreover, Carrier has not denied that Claimant's performance of his duties met Carrier's standards.

The Organization further argues that Carrier repeatedly violated Claimant's rights under Appendix I of the current Agreement: when Carrier removed Claimant from service pending the result of his physical examination; when Carrier failed to provide Claimant with medical data on which an appeal could be based; when Carrier turned down the Organization's request that the eye doctor who already had examined Claimant be appointed the neutral medical authority to evaluate Claimant's condition.

The Organization disputes Carrier's contention that its request for a neutral authority was not timely. The Organization points out that Carrier finally made some medical information available to Claimant on August 22, 1984; Claimant's notice of protest is dated August 28, and the Organization's request for a neutral authority is dated September 5. The Organization asserts that its request for a neutral authority was within the fifteen-day period provided in Appendix I and, therefore, was timely. Moreover, the doctor who administered Claimant's eye examination is a medical doctor and qualified to act as neutral authority. The Organization also points out that Carrier required Claimant to undergo three physical examinations during the period from June 1, 1983, to July 25, 1984; the Organization argues that Claimant was being harassed because of his on-duty injury. The Organization finally contends that the Claim should be sustained.

The Carrier contends that prior to the July, 1984 examination, Claimant had been assigned a light work load because Carrier was aware of Claimant's medical difficulties. After the July, 1984 examination, Claimant was withheld from service for his own safety. Carrier asserts that neither Claimant's August 28, 1984, letter to Carrier nor the Organization's August 8, 1984, submission meet the requirements of Appendix I, the procedure for challenging such a decision: neither one was timely; neither one requested a