

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
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(Northeast Illinois Regional Commuter Railroad
(Corporation

STATEMENT OF CLAIM:

1. That the Northeast Illinois Regional Commuter Railroad Corporation violated the terms of our Agreement, particularly Rule 32(a), when they failed to compensate Carman Donell McDaniel on July 15, 1988.

2. That accordingly, the Northeast Illinois Regional Commuter Railroad Corporation be ordered to compensate Carman Donell McDaniel four and one-half hours at the punitive rate.

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 injured his knee while playing basketball and was absent on July 12, 13 and 14, 1988. He returned to duty on July 15, 1988, with an unconditional release from his personal physician. As he attempted to punch in he was told that Carrier had scheduled an appointment with its Company Doctor for 10:00 AM. Claimant kept the appointment and reported for duty at 11:30 AM. He was not paid for the four and one-half hours he was absent for the Company physical examination.

The Organization contends that under the terms of Rule 32(a) reading:

"Employees coming within the scope of this agreement will not be required to take physical examinations unless it is apparent that the employee's health or

physical condition is such that an examination should be made. So far as possible, physical examinations ordered by the company at its expense shall be conducted during regular working hours."

Claimant is entitled to be paid for the time lost. We agree, a provision in an Agreement which requires a Carrier to make an attempt, as far as possible, to conduct physical examinations, it orders at its expense, during regular working hours most certainly contemplates the time necessary for the examination will not be deducted from the employees pay. Any other construction would make the requirement that the examination if possible, be conducted during regular working hours meaningless.

The Claim has merit, it will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of November 1990.