

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13525

Docket No. 13403

00-2-98-2-98

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Indiana Harbor Belt Railroad Company violated the current Working Agreement when they failed to compensate Carman B. Dust for out of pocket medical cost and twenty-two (22) days pay from May 27 through June 26, 1997.
2. That the Indiana Harbor Belt Railroad Company (hereinafter referred to as the Carrier) be ordered to reimburse and compensate Carman B. Dust (hereinafter referred to as the Claimant) for out of pocket medical cost of two hundred thirty-four dollars and fifty cents (\$234.50) and twenty-two (22) days pay at eight (8) hours each of pro rata rate of carman’s straight time pay as provided by Rule #1-Basic Work Week and Hours of Service and Rule #46-Applicants for Employment of the current Working Agreement.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimant had been on a series of medical leaves of absence owing to an off-duty injury. By letter dated April 10, 1997, he was notified by the Carrier in pertinent part as follows:

“Please be advised that you have been granted an extension to your previous medical leave of absence which expired 4-14-97. This extension will commence 4-15-97 and expires 5-14-97. You will be expected to return to work on May 15, 1997. However, prior to May 15, 1997, you must contact Dr. Horton relative to scheduling a work capacity evaluation or a functional capacity evaluation.”

The Claimant returned to work on June 27, 1997.

The Organization is contending that the Carrier is responsible for the expense involved in the required testing of the Claimant’s physical condition, as well as pay for a portion of the time involved. At the outset, it must be noted that the Claimant’s medical absence was based on an off-duty injury. In this circumstance, the Carrier has the well established right to receive the necessary assurance of an employee’s medical release to return to work. The Claimant was advised in advance of the type of testing that would be required.

There was an extended period from the date the Claimant asserted he was ready to return to work and the date of his actual return. This was due, entirely or in major part, to the Claimant seeking and obtaining a less expensive test than originally proposed by the Carrier and then a period of time to gain the Claimant’s assurance that he was no longer required to take certain medications which, if continued, may have impaired his capacity to return to work.

As noted by the Carrier, the Organization cites no Rule that may have been violated in this procedure. As a result, there is no contractual basis for the claim. See, for example, First Division Award 24475, Second Division Award 10259 and Third Division Awards 29053 and 25939.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 27th day of July, 2000.