

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13790

Docket No. 13682

04-2-03-2-1

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

(Brotherhood of Railway Carmen Division  
(Transportation Communications International Union

**PARTIES TO DISPUTE:** (

(Delaware and Hudson Railway Company, Inc.

**STATEMENT OF CLAIM:**

“Claim of the Committee of the Union that:

1. That the Delaware and Hudson Railway Company (Division of CP Rail System) violated the terms of our current agreement, in particular Rule 16.1 when they arbitrarily denied compensation to Carman Terry L. Graves for a second medical examination held on Thursday, February 7, 2002 in Wilkes Barre, PA.
2. That, accordingly, the Delaware and Hudson Railway Company be ordered to compensate Carman Terry L. Graves in the following manner:

4 hr. straight time	-	70.72
4 hr. overtime	-	106.08
30 miles @ \$.345	-	10.35

A total of \$187.15. This is the amount of compensation he would have received if the carrier properly applied the language of our 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 Organization contends that the Carrier violated Rule 16.1 in particular that part which reads, “. . . In those instances where the Carrier does not concur with the determination of the employee’s physician and directs the employee to a second medical examination, such examination shall be at the Carrier’s expense.” The Organization believes that such violation occurred when the Railroad scheduled a Defense Carpel Tunnel Syndrome Test for February 7, 2002 at 2:00 P.M.

The Carrier contends that there has been no Rule violation, that Rule 16.1 refers to “Fitness for Service” questions and not to instances such as this where the Claimant was receiving the test as the result of a lawsuit.

The Board received a copy of a Release Agreement dated June 11, 2003 which indicates the Claimant and the Carrier have reached a full and final settlement regarding this matter. The Board will dismiss the claim on the basis that the Claimant is estopped by his June 11, 2003 Settlement Agreement from progressing this matter.

**AWARD**

Claim dismissed.

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**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 11th day of March 2004.**