



Award Number 17929
Docket Number TE-17611

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
**THE NEW YORK, NEW HAVEN AND HARTFORD RAIL-
ROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York, New Haven and Hartford Railroad, that:

1. Carrier violated the Agreement between the parties when it refused to compensate Agent-Operator E. E. Williams for time lost and travel expenses incurred on October 26, 1966, when complying with Carrier's instructions to report to a physician designated by the Carrier for physical examination.
2. Carrier shall be required to compensate Agent-Operator E. E. Williams for time lost and expenses incurred as claimed.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties dated September 1, 1949, as amended and supplemented, is on file with your Honorable Board and by this reference is made a part hereof.

This claim was timely presented, progressed to the highest officer designated by the Carrier to receive appeals, including conference in accordance with the terms of the Agreement, and has been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

Due to Claimant's physical condition, a condition that had existed for a considerable number of years, his maximum work week had been restricted by his personal physician to five days, forty hours per week. This condition followed his return from military service. This incident arose when Carrier, in addition to requiring him to work a nine (9) hour day Mondays through Fridays, expressed its desire that he additionally work three (3) hours each Saturday. Claimant's personal physician advised against such procedure. Carrier then instructed Claimant to report to the company doctor in New Haven, Connecticut for a physical examination. Carrier did not instruct him to report on any particular date, nor any particular day of the week, but as the company doctor's office days and hours were the same as those of the Claimant, it was necessary for him to lose time, a full day, to make the trip from his work location, Plainfield, Connecticut, to New Haven, Connecticut, to undergo this examination on Wednesday, October 20, 1966.

Copy of Agreement dated September 1, 1949, as amended, between the parties is on file with this Board and is, by reference, made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Following his return from military service, the Claimant's maximum work week had been restricted by his personal physician to five days, forty hours per week.

Claimant was the regularly assigned agent-operator at Plainfield, Connecticut, assigned work days Mondays through Fridays, 8:00 A.M. to 5:00 P.M.

Carrier advised Claimant that it desired that he work three additional hours each Saturday. When Claimant's physician declined to approve such additional Saturday work, the Carrier instructed Claimant to report to Carrier's doctor in New Haven, Connecticut for physical examination. Inasmuch as the office days and hours of the Carrier's doctor coincided exactly with the Claimant's hours of work, Monday through Friday, it was necessary for the Claimant to travel from Plainfield to New Haven on Wednesday October 20, 1966, a work day, in order to submit for examination, thereby losing a full day of working time.

Employees contend that Article 17 of the Agreement entitles Claimant to be compensated for wages lost and expenses incurred when complying with Carrier's order to undergo physical examination.

Carrier's basic position is that Article 17 enumerates certain specific examinations, to wit: rules, vision color perception or hearing, for which pay for working time will be allowed. It reasons that since Rule 17 lists specific examinations, then of necessity, those examinations which are not listed in Article 17 must be excluded. It further urges that the phrase in Article 17 which reads "or other requirement of a like nature" refers specifically to "examinations (rules, vision, color perception or hearing)" and therefore does not encompass physical examinations. Carrier therefore concludes that claim should be denied since no Rule requires payment for time lost while undergoing medical examination.

It is recognized by this Board that the Carrier had the managerial right to demand that the Claimant present himself at the Company doctor's office for examination. Claimant was therefore required to appear for examination or suffer discipline for failure to so do. The Board is exceedingly aware that the Claimant was compelled to lose working time in order to comply with the Carrier's order inasmuch as his hours of work were identical to the Company doctor's office hours.

It is the confirmed opinion that Article 17 of the Agreement is controlling and provides for payment in the instant situation. This conclusion is founded upon our interpretation of the meaning of the words "or other requirements of like nature." We are not persuaded to accept the Carrier's narrower interpretation of this phrase but must read the words "or other requirements of like nature" in conjunction with the other wording in Article 17 which reads: "court, investigations, inquests, examinations".

The meaning of the phrase is clear and is intended to encompass all orders of the Company which require employees to attend at places or situations which are enumerated in Article 17 or those which are of like nature to

those enumerated therein. The instant matter involves a Company order for which payment is required by Article 17 of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1970.