



Award Number 17930

Docket Number TE-18161

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

PENN CENTRAL—NEW HAVEN REGION

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

1. Carrier violated the agreement between the parties when it declined to compensate Miss L. A. Farr for reporting to New Haven, Connecticut for a physical examination by Dr. Roth on August 5, 1967.
2. Carrier shall now compensate Miss L. A. Farr for eight hours at the pro rata rate of her position at Windsor Locks, Connecticut.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An 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.

Claimant lost one day's work complying with Carrier's instructions to report to the Company Medical Examiner for a physical examination.

(b) THE ISSUE

Is a regular employee entitled to be compensated for wages lost when complying with Carrier's instructions to undergo a physical examination?

(c) FACTS

Claimant, Miss L. A. Farr, is regularly employed as Operator-Clerk at Windsor Locks, Connecticut. She lost time during the month of June 1966 due to illness. Following that illness she had been periodically reporting to the Company Doctor in Hartford, Connecticut, for physical examination. These examinations were made without loss of time on the part of Claimant. For reasons best known to it, Carrier ordered Miss Farr to report to the Company Medical Examiner in New Haven, Connecticut, and she complied with these instructions on August 4, 1967. Due to the travel time and a conflict

The instant claim was denied on the property on the grounds that there is no rule which requires payment for time lost account undergoing a medical examination by a company physician.

Attaching in exhibit form is copy of pertinent correspondence as follows:

"A"—General Chairman's appeal

"B"—Carrier's decision

Cgpy 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: The Claimant herein, an Agent Operator at Windsor Locks, Connecticut with work days Monday through Friday, hours 8:00 A.M. to 5:00 P.M.

Because of Claimant's physical condition, the Carrier instructed Claimant to report to Carrier's Medical Examiner in New Haven for medical examination.

Claim is made herein for one day's pay representing loss of earnings while undergoing medical examination at Carrier's request.

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, these examinations which are not listed in Article 17 must be excluded. It further urges that the phrase in Article 17 which reads "or other requirements of 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 Carrier had the managerial right to demand that the Claimant present herself at the Company Medical Examiner 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 Carrier's order.

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 situa-

tions 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.