

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20570
Docket Number Z-20263

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company
(Pacific Lines)

STATEMENT OF CLAIM: Claims of the General **Committee** of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

Claim No. 1:

(a) The Southern Pacific Transportation Company (Pacific Lines) violated the agreement between the Company and the **em-**ployes of the Signal Department represented by the Brotherhood of Railroad Signalmen effective April 1, 1947 (reprinted April 1, 1958 including revisions), particularly Rules 70 and 71.

(b) Signalman J. Harris be compensated for one (1) hour and fifteen (15) minutes at his regular rate of pay for January 21, 1972 (A.M.) (Carrier's File: 011-221 (H))

Claim No. 2:

(a) The Southern Pacific Transportation Company (Pacific Lines) violated the agreement between the Company and the **em-**ployes of the Signal Department represented by the Brotherhood of Railroad Signalmen effective April 1, 1947 (reprinted April 1, 1958 including revisions) , particularly Rules 70 and 71.

(b) Signalman H. B. Davis be compensated for two (2) hours and thirty (30) minutes at his regular rate of pay for February 4, 1972, from **7:30** a.m. to 10:00 a.m. (Carrier's File: 011-221 (d))

OPINION OF BOAW: The dispute in this matter, involving two claims, concerns the issue of whether or not the requirement of obtaining a doctor's release following an illness is a "required examination" under the provisions of Rule 71. That Rule provides:

"**RULE 71. EXAMINATION.** Such examinations or re-examinations as **employees** may be required to take, shall, if possible, be conducted during regular working hours without deduction in pay **therefor.**"

In both Claims, the **employees** had been absent for one day due to illness or disability and were under instructions, over a substantial prior period of time, to secure a doctor's release prior to returning to work. In both instances Claimants reported to work without the release and were instructed to secure such a release as a condition precedent to returning. The Claims are for the elapsed time required by the Claimants to secure the releases and return to work.

It is clear and well established that Carrier has the right, in the absence of any rule prohibitions, to require a doctor's release as a condition precedent to returning to work following illness or accident (See Awards 15592, 18317 and Second Division Awards 4808 and 6269 for example). Such a doctor's release was not contemplated by the language of Rule 71. That Rule was designed to provide for the situations where the health or physical ability of the **employee** is suspect and when such **employee** is required to report to a Carrier designated physician or hospital for physical examination. The two circumstances are clearly distinguishable. In **the** Claims before us there is no evidence, incidentally, that Claimants were subjected to a physical examination and certainly no evidence that they were "required" to undergo such examination. This Board cannot extend the unambiguous meaning of Rule 71 to cover the requirements to secure doctor's releases.

As a secondary issue, Petitioner has raised the argument that Carrier's requirement of medical releases with respect to the two Claimants constituted a discriminatory disciplinary action in violation of Rule 57 (dealing with disciplinary investigations). No evidence in support of this assertion appears and hence the argument must be rejected.

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 not violated.

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Claims denied.

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

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1974.