

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21429  
Docket Number SG-20974

William M. Edgett, Referee

PARTIES TO DISPUTE: ( Brotherhood of Railroad Signalmen  
( The Long Island Rail Road Company

STATEMENT OF CLAIM: claim of the General Committee of the Brotherhood  
of Railroad Signalmen on the Long Island Rail Road:

Carrier pay each **employee named** on the seniority roster (attached to **initial claim\***) eight (8) hours at the pro-rata rate, where applicable, and any overtime, where applicable, (Carrier's records will reflect this) between the hours of 12 midnight and 8:30 p.m., August 8, 1973.  
[\*Seniority roster attached to the initial claim, revised January 1, 1973, posted April 3, 1973, contains 227 names/

OPINION OF BOARD: Claimants engaged in an unauthorized work stoppage. Carrier obtained a **temporary** restraining order and the Organization's General Chairman instructed the **employees** to return to work. The unauthorized work stoppage had taken the form of a "sick-out" and Carrier decided to require **all employees** who had engaged in it to have a **physical** examination by Carrier's physician **before** returning to work. The **employees** refused to take the examination and remained outside Carrier's **Jamaica** Station while the **General** Chairmen and their attorney consulted with the Federal Judge who had ordered the employees to return to work. As a result of that meeting, Carrier rescinded its order requiring a physical examination and the employees returned to work.

The claim is for pay for the day lost by the employees who refused to take the physical examination. The Organization contends that Carrier caused the employees to lose work on August 8, 1973, and that Carrier should be required to pay them for the time that they lost.

Essentially the Organization wishes Carrier to examine the seniority roster, **determine** which employees were scheduled to work and pay the employees so determined. No **employee** is identified as having reported for the physical **examination** as directed by Carrier. Carrier **declines** the claims, on among other grounds, the point that the claim is vague and indefinite and does not identify the Claimants with the required particularity. It is not necessary to reach precisely that point because it is **interwoven** with a point which the Board finds is **fatal** to the claim.

It is generally recognized that employees who are instructed by Carrier to perform **an** act which is not detrimental to their health and safety **are** required to "obey now and grieve later," That is, Carrier instructions which are **alleged** to be in violation of the Agreement are to be carried out, **and** any alleged infringement on **employees'** rights under the Agreement is to be determined through the **grievance** procedure. The **employees take** the position that Carrier was not authorized by the Agreement to require physical examinations. An **employee** who reported for a physical **examination** and lost time from work thereby, or who was prevented from working would be in a **position** to **challenge** Carrier's right to require the **examination** and to seek reimbursement for his loss. An **employee** who refused to comply with Carrier's request. has forfeited his right to grieve and has also made it impossible to determine whether or not he stood ready to work on the date in question. It is ordinarily understood that **employees** who are on a work stoppage are not considered to **have** left that status until they make an **unequivocal** offer to return to work. No such offer **can** be found in the record before the **Board**. Even after the **General Chairman** and the attorney conferred with the District Judge, the employees still **refused** to return to work until the General Chairman **personally** appeared at **Jamaica** station. **They** were unwilling to accept his word over the telephone. Given all of these facts **and** circumstances, the **Board believes that** it must deny the claim.

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 **claim** should be denied.

A W A R D

**Claim** denied.

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

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.

