

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23209  
Docket Number MW-22273

Dana E. Eischen, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
                                  { New Orleans Public Belt Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier shall reinstate Bridgeman-Helper Frank J. Bertucci, Jr. to service with all seniority, vacation rights, Insurance coverage and any other rights unimpaired.

and

(2) Claimant Bertucci shall be reimbursed for all compensation loss suffered by him as a result of being withheld from service commencing September 16, 1976 (System File 013.7)."

OPINION OF BOARD: The dispute in this docket was first addressed in Award No. 22640 of this Division in which we held that:

"----Claimant has been denied improperly the 'further physical examination' to which he was entitled under Rule 29(a).

\* \* \* \* \*

This dispute is remanded to the property and Carrier is directed to comply with the provisions of Rule 29(a) of the Controlling Agreement as to the Claimant. Jurisdiction is retained by this Board to resolve further questions which may arise regarding implementation of this Award and the amputation of such damages, if any, as may be warranted by the outcome of the physical examination ordered under Rule 29."

Subsequently, in Award No. 22944, we again considered this dispute and ruled that:

"From the record of events now before this Board, it is apparent that claimant is attempting, for reasons known only to him to prevent the orderly progression ordered by this Board for the resolution of this dispute.

\* \* \* \* \*

"Therefore, this Board now directs that Carrier will make one final attempt via certified mail, return receipt requested, or by personal delivery evidenced by receipt, to notify claimant Bertucci to appear for an examination on a day certain on which an appointment can be arranged with the appropriate physician(s). If claimant fails to appear for and submit to the scheduled examination, this Board will conclude that he is no longer interested in pursuing this dispute and we will thereupon order that it be dismissed with prejudice."

The examination was scheduled as directed. Claimant Bertucci was notified via certified mail and a return receipt was obtained. Claimant Bertucci neither attended the scheduled examination nor gave any reason for his non-attendance. Therefore, this dispute is hereby dismissed with prejudice.

**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 this dispute has now been rendered moot.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.

