

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29053
Docket No. MW-28326
91-3-87-3-877

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad Company
(Former St. Louis-San Francisco Railway Company)

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

(1) The Agreement was violated when the Carrier instructed Special Equipment Operator M. W. Carter to submit to a medical examination and then failed and refused to compensate Mr. Carter for the expense of the examination and the time expended obtaining the examination (System File B-966/EMWC 86-11-7A).

(2) Mr. M. W. Carter shall be allowed three and one-half (3 1/2) hours of pay at his straight time rate and he shall be paid Seventy Dollars (\$70.00) as reimbursement for the cost of the medical examination."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts are not disputed. The Claimant, a Special Operator, was given a routine physical examination at Irving, Texas, by a Company Doctor in May 1986. At this time the Claimant's blood pressure was elevated to 168/106 and his weight was 242 pounds. Based on those findings, the Carrier's Chief Medical Officer requested that Claimant have his personal physician make a study of his physical condition, particularly as to high blood pressure control, giving Carrier's Chief Medical Officer a record of the findings, treatment required, and capabilities of his employment as a machine operator. This advise was transmitted to the Claimant in the form of a letter from the Superintendent. The letter stated:

"Instructions received from office of Dr. T. V. Mears, Chief Medical Officer, Burlington Northern Railroad, states that you should arrange to have your personal physician make a study of your condition particularly as to high blood pressure control.

Have your doctor send a letter to the Chief Medical Officer, 3000 Continental Plaza, 777 Main St., Fort Worth, TX, 76102, giving a record of the findings, treatment required, and capabilities of your employment as a machine operator.

As this is for your own personal health, this will be your financial responsibility."

The Claimant made an appointment for the examination which occurred during work hours. The claim seeks reimbursement for the cost of the exam and lost time.

At the outset, a procedural issue must be addressed. The Organization draws attention to the fact that the Carrier failed to sign its submission. This is not in compliance with Circular No. 1 of the Board which states that all submissions "must" be signed.

The Board acknowledges the rules and requirements of Circular No. 1. It is also acknowledged that the Carrier's submission does not comport with these requirements, and thus, it is not properly before the Board. However, this does not necessarily mean that the claim must be sustained as presented. The Organization's submission contains all the correspondence on the property. Accordingly, there is a record before us which sets forth the evidence and the Carrier's position. Our decision is based on that record.

On the merits, it is the conclusion of the Board that the claim cannot be sustained. Simply, there is no rule or contractual provision in this Agreement which prevents the Carrier from suggesting to the Claimant that he see his personal doctor or that requires them to pay for costs incurred in connection with the examination.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dewar - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.