

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29883
Docket No. CL-30704
93-3-92-3-646

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10856) that:

1. Carrier violated the effective agreement when it improperly required Mr. W. J. Shukitis to obtain a medical examination as a requirement for remaining in service and then refused to reimburse him the cost of such examination;
2. Carrier shall now reimburse Claimant the cost of the medical examination (\$25.00) which it required him to obtain without just cause."

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 employe 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 record establishes that Claimant has diabetes. On May 30, 1991, Claimant became ill at work after a discussion with a supervisor which is described by the Organization as "somewhat heated." Claimant never asked to be relieved of duty for the day. The Claimant was required to report to the Carrier's Dispensary for examination and then released to go home. The Carrier's Medical Director provided the Claimant with Standard Return to Work form (STDRTW) to be completed by his personal physician. The form was

completed on May 30, 1991, approving Claimant's return to work on June 1, 1991. On June 15, 1991, this Claim was submitted as follows:

"Please accept this as a claim for twenty-five (25) dollars, physician's fee. The facts surrounding this claim are as follows: I received a letter from P. D. Pretter, M.D. dated May 30, 1991 directing me to see my personal physician. Attached is a copy of said copy of said letter. The Carrier ordered me to see my personal physician, thus the Carrier is liable for the medical expense incurred. If I had not complied with Dr. Pretter's directive, I would be subject to charges of insubordination.

An early settlement of this claim will be greatly appreciated."

The Organization contends the Carrier's actions in this case were arbitrary and intended to harass the Claimant. The Organization insists the Claimant's physical condition did not require he be examined. It is the Organization's belief that the Carrier caused the Claimant unnecessary expense. Moreover, the Organization argues Rule 62 of the Agreement clearly prohibits the Carrier from forcing the Claimant to submit to a physical examination under the conditions presented herein. The Organization asserts the Carrier's violation of Rule 62 requires it to pay the costs the violation caused.

The Carrier maintains the STDRTW form sent to the Claimant does not direct him to see his personal physician. Besides, the Carrier claims that information contained in the "case record" clearly shows the Claimant wanted to see his personal physician.

This Claim, as presented, does not challenge the Carrier's insistence that the Claimant be examined at its Dispensary. The crux of the Claim lies with the allegation that the Carrier ordered him to see his personal physician. The record developed on-the-property contains a copy of the Claimant's case record. Under "History," it indicates the Claimant explained that his sugar became elevated and his mouth became "very dry." Under Findings and Diagnosis, the examining physician wrote "states he had a argument and thinks blood sugar is up and wants to see his family physician...patient can go home and see family physician."

This information was pointed out to the Organization by letter of December 30, 1991, well before the submission of this Claim to

the Board, but there is no indication the Organization challenged the Carrier's contention. In view of the case record, it is evident the Claimant made a decision to see his personal physician. Therefore, it cannot reasonably be claimed that the STDRTW form given the Claimant for completion by his physician caused or required him to be seen by his physician.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.