

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32086
Docket No. CL-31960
97-3-94-3-274**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11043) that:

Claim of the District Protective Committee is hereby presented to the Carrier in behalf of Claimant M. Taylor, account the Carrier violated the Clerks' Rules Agreement as amended September 6, 1991, particularly Rules 16, 23 and other rules when it ordered Clerk Taylor to report to Niagara Falls, New York from Rochester, New York, for a return to work physical on October 15, 1992.

That Claimant M. Taylor now be allowed eight hours pay at the appropriate pro-rata rate of her regular assignment, as well as full reimbursement for her bus fare on October 15, 1992. Further, that in order to settle this claim, arrangements be made at a local facility for all future physicals, so as not to burden the employees with excessive travel from their home location. Claimant did travel to Niagara Falls at the request of the Carrier."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant was prepared to return from a leave exceeding 30 days and thus required to take a return-to-duty physical examination. She was stationed at Rochester. She was advised that the examination could be performed at Albany or Niagara Falls. The latter point is 75 miles from her home, and she chose to go there. Alternatively, she could have taken Carrier transportation without charge to Albany.

The claim concerns, first, a demand for pay and expenses to undertake the required physical examination.

The Claimant was not denied any assigned work time because of the physical examination (which necessarily preceded a return to duty). No specific Rule is cited which covers pay for this situation. The Board follows well established precedent in determining that pay is not required. As stated in Award 20632:

"The issue involved herein is not new. In a similar situation, the Board in Award 2828 stated:

' . . .to recover overtime pay for off duty time spent in taking a physical examination we believe the true rule is that such right must be found from express language appearing within the four corners of the contract itself, or from language appearing therein from which an inference to that effect is reasonable to be drawn, or it does not exist.'

The same denial position was maintained by the Board in a series of following cases including Awards 3302, 13852, 16576 and Fourth Division Award 1370. Awards 17929 and 19989 cited by Petitioner are not pertinent in that in both of those cases Claimants lost pay as a result of taking a physical examination during working hours.

In the case before us we find no rule support whatever for Petitioner's position, particularly in view of our consistent position that there was not 'work' involved in the taking of the physical examination. . .

Further, there is no evidence to support the contention of past practice. In view then, of the lack of rule support for Petitioner's position, and in the light of the well defined position of the Board in prior similar disputes, the Claim must be denied."

The claim further calls for "arrangements [to] be made at a local facility for all physicals, so as not to burden the employes with excessive travel from their home location." While this may be a worthy suggestion, it is obviously beyond the Board's jurisdiction for consideration.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 9th day of July 1997.