

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32465
Docket No. MS-33783
98-3-97-3-252

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Mark A. Lynch

PARTIES TO DISPUTE: (

(New Jersey Transit Rail Operations

STATEMENT OF CLAIM:

“Claim: Rule 43 (e) An appeal denied in accordance with Paragraph (d) shall be considered close unless, within one (1) year from the date of the decision of the Director-Labor Relations, proceedings are instituted before the National Railroad Adjustment Board or such other Board as may be legally substituted therefore under the Railway Labor Act.

Cause of Dismissal: The Claimant failed to appear for the hearing held to investigation charges that he did not comply with a written request to be examined by the Carrier’s physician and to submit medical documentation related to an injury that allegedly occurred on October 26, 1994.

Violation of Contract: Rule 42 (c) The time limits for beginning the investigation referred to in Paragraph (a) of this rule are subject to the availability of the accused and witnesses to attend investigation and shall be extended by the equivalent amount of time the accused employee and necessary witnesses are off duty account of sickness, temporary disability, discipline, leave of absence or vacation. The time limits may be extended at any time by mutual agreement in writing between the Company and the accused (sic) employee or his duly accredited representative. Read page 8 of the transcript by Ms. Trapp, the above rule should have been cited in the transcript on behalf of Mr. Lynch.

Agreement by Arbitrator: This Board on other occasions has stated that it does not favor hearings held in absentia.

Law States: 'Whoever, by threat, intimidation, order, rule, contract, regulation or devise whatsoever, shall attempt to prevent any person from furnishing..such information to a person in interest, or whoever discharges or otherwise discipline any employee for furnishing such information to a person in interest, shall, upon conviction thereof, be punished, by a fine of not more that \$1,000.00 or imprisonment, for not more than one year, or by both such fine and imprisonment, for each offense.' ('person in interest' in the law above quoted refers to your lawyer.)

Dr. Statement: A proof of the Emergency Room treatment was submitted by my mother to Hoboken Ticket Office. Ms. Adams letter stating I refused Medical treatment is not proven so Rule 42 (b) was violated. (exact offense).

Mr. Lynch statement: I feel since I was out under Doctor's Care with proof, as stated before and other awards by our Union Agreement that the burden of proof must be submitted in order to say that I was out of compliance with the Rules and regulation of N.J. Transit Medical Department. Under The State Court or Federal Court, whichever better suits his convenience or purpose it states:

See Your Own Doctor:

Some of the dangers of going to the company doctor are as follows:

1. The injured man may be discharged from treatment even though he needs further care.
2. He may be sent back to work before he is fit;
3. He may not get proper, specialist's attention;
4. He often finds that the company doctor, in order to protect the railroad, is more interested in playing down the injury rather than frankly telling the injured worker how badly hurt he is;

5. When the injured man has been treated only by the company doctor generally plays down the existing injuries as well as the period of future disability the results, of course, in a smaller recovery by the injured man.

For all of these reasons it is important that the injured man be treated by his own physician instead of the company doctor."

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.

Claimant, Mark Lynch was employed at the Carrier's Hoboken Ticket Office. On Wednesday, October 24, 1994, Claimant was injured while at work. Claimant refused Carrier's medical treatment but reportedly sought and received medical attention at St. Francis Hospital later on that date.

By a letter dated November 1, 1994 Claimant was instructed to "provide us with any documentation from your physician . . ." and enclosed a Medical Service form for completion by the Company Physician. The notice was sent certified mail and was receipted by the Claimant on November 9, 1994. From the record before us it appears that Claimant never complied with those instructions.

Claimant was given notice to attend an Investigation concerning his failure to comply with the Carrier's instruction on November 28, 1994. The Organization sought and received a postponement and the Investigation was rescheduled for January 19, 1995. Claimant did not attend the Investigation and it was held in absentia. Claimant was dismissed from Carrier's service by letter dated February 2, 1995.

The Organization appealed this matter up to and including submission of this matter to Special Board of Adjustment No. 975. Award 169 of Special Board of Adjustment No. 975 denied the Organization's appeal on Claimant's behalf on September 5, 1995.

The jurisdiction of this Board is concurrent with other arbitration Boards in this industry. We have no power to review or decide what has been decided by Special Board of Adjustment No. 975, Award 169 concerning the same matter. As was stated in Third Division Award 22736:

"In order to prevent chaos and multiplicity of appeals, the instant claim will be dismissed for the reason that the issue involved concerning claim here has been determined by Public Law Board No. 2203, which is a tribunal of coordinate jurisdiction with this Division and whose decisions are, likewise final and binding under the Railway Labor Act. This claim now being moot is dismissed for lack of jurisdiction by this Division."

See also: Second Division Awards 7859, 12148, Third Division Awards 29909, 20455.

AWARD

Claim dismissed.

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 21st day of January 1998.