

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33496

Docket No. CL-34655

99-3-98-3-319

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

(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the organization (GL-12027) that:

I am filing claim on behalf of Mr. Joseph Cooper, TSR, Rigby Yard (Portland, Maine). Claim is for eight (8) hours at the rate of time and one-half for June 24, 1997.

Carrier violated the Agreement when it accepted Mr. Cooper into Train Service, account his position at PT Tower (Rigby Yard) was abolished. One [sic] June 23, 1997, the Carrier sent Mr. Cooper for his physical with Dr. Johnson at Portland, Maine, following his appointment, Jr. Cooper was informed that he would be required to return to the doctor's office the following day for a continuing physical exam, June 24, 1997. The Carrier originally paid Mr. Cooper eight (8) hours at straight time and then took four (4) hours pay away.

Rules violated are 35.1, 35.2, 35.3 and all other rules of this Agreement.

Claim is valid and must be paid.”

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.

As of June 23, 1997, Claimant was without sufficient seniority to hold a Clerk's position. In anticipation of this event, Claimant accepted the Carrier's offer to become a Trainman. Claimant was instructed to report for a physical exam on June 23. As a result of the Claimant's inability to give a urine sample he had to report back to the doctor on June 24.

Under the provisions of Rule 32.1 the Claimant claims eight hours pay and the Carrier allowed four hours. Rule 35.1 reads as follows:

"35.1 When employees are directed by the Carrier to report for a physical examination, they will be reimbursed for all actual necessary expenses incurred and will be compensated for any time lost as a result of taking such examination. In the event no time is lost, employees will be compensated for the actual time spent at the physical examination at the applicable straight time hourly rate with a minimum of four (4) hours."

The Organization argues that because Claimant had to report on the second day, a second four hour payment should apply.

The Carrier argues that the physical examination had nothing to do with clerical duties and as such, Rule 35 does not apply.

The Organization has the burden of proving the Agreement was violated. In the record before this Board, there is no evidence that taking a physical exam for employment as a Trainman is covered by the Schedule Agreement. However, even if it was covered, the reason for the second trip to the doctor was caused by the Claimant.

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 22nd day of September 1999.