

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19989
Docket Number SG-19643

Burl E. Hays, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Illinois Central Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company:

On behalf of Signalman R. B. Ames, who is assigned to Signal Gang No. 347, for eight hours pay, \$30.31, plus expenses, \$1.45 for breakfast; \$1.75 for lunch; \$1.25 for dinner; and \$1.10 for suburban fare, for a total of \$35.86.

Carrier violated the agreement, particularly Rules 808 and 214, when, on Monday, August 24, 1970, it required Mr. Ames to make a trip to the Chicago (IC) Hospital for the purpose of determining whether or not he was color blind and deducted eight hours pay from his pay check and refused to reimburse him for expenses incurred. Rules 808 and 214 read as follows:

"Such examinations or re-examinations as employees may be required to take will, if possible, be conducted during regular working hours without deduction in pay therefor."

"Actual necessary expenses will be allowed when away from home station."

(Carrier's File: 135-311-169; Case No. 263 Sig.)

OPINION OF BOARD: The Brotherhood of Railroad Signalmen has presented this claim on behalf of R. B. Ames, a Signalman stationed at Warren, Illinois. The facts are that on June 20, 1970, Ames was declared to be unqualified for his position as a signalman, and the Carrier suggested he undergo a special examination in Chicago at the Illinois Central Railroad Hospital for the purpose of determining whether or not he was in fact unqualified because of being color blind. Mr. Ames reported for the examination and, in doing so, he incurred expenses in the amount of Five Dollars and fifty-five cents (\$5.55). Mr. Ames was not allowed pay for the day of his examination, which was one of his regular work days, nor was he reimbursed for his expenses.

The Brotherhood maintains Carrier violated the Agreement between the parties effective August 1, 1958, particularly the following provisions thereof:

RULE 808: "Such examinations or re-examinations as employees may be required to take will, if possible, be conducted during regular working hours without deduction in pay therefor."

RULE 214: "Actual necessary expenses will be allowed when away from home station."

Carrier takes the position that Rule 808 applies only to periodical physical examinations held in the vicinity of the employee's headquarters and that Rule 214 applies only in cases where the employees are performing actual compensated work service for the company.

The Board cannot go along with this reasoning. This is not a case where an employee refused to accept the local doctor's decision and demanded a re-examination. He did not elect to go to the Chicago hospital; he was, in effect, ordered to do so by Carrier officials. If he had refused to go he would have been subject to discipline -- and possibly dismissal from service.

The Carrier is the sole judge in determining whether or not an employee needs a physical examination or re-examination, but the contention that such examination, especially in the instant case, is solely for the benefit of Claimant is without merit. (Award No. 3766). In fact, in this case Carrier took the position that rather than lose a good employee, it would be best to arrange for a re-examination to determine if he wasn't still qualified to do his work.

We feel that the Carrier, in accord with the Agreement, is required to pay its employees any time an employee is carrying out instructions from his superior officer. (Award No. 17770). In this instance Claimant was virtually ordered to go take this examination.

We believe this claim should be sustained.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1973.