

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21429
Docket Number SG-20974

William M. Edgett, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:

Carrier pay each employe named on the seniority roster (attached to initial claim*) eight (8) hours at the pro-rata rate, where applicable, and any overtime, where applicable, (Carrier's records will reflect this) between the hours of 12 midnight and 8:30 p.m., August 8, 1973.
/*Seniority roster attached to the initial claim, revised January 1, 1973, posted April 3, 1973, contains 227 names/

OPINION OF BOARD: Claimants engaged in an unauthorized work stoppage. Carrier obtained a temporary restraining order and the Organization's General Chairman instructed the employes to return to work. The unauthorized work stoppage had taken the form of a "sick-out" and Carrier decided to require all employes who had engaged in it to have a physical examination by Carrier's physician before returning to work. The employes refused to take the examination and remained outside Carrier's Jamaica Station while the General Chairman and their attorney consulted with the Federal Judge who had ordered the employes to return to work. As a result of that meeting, Carrier rescinded its order requiring a physical examination and the employes returned to work.

The claim is for pay for the day lost by the employes who refused to take the physical examination. The Organization contends that Carrier caused the employes to lose work on August 8, 1973, and that Carrier should be required to pay them for the time that they lost.

Essentially the Organization wishes Carrier to examine the seniority roster, determine which employes were scheduled to work and pay the employes so determined. No employe is identified as having reported for the physical examination as directed by Carrier. Carrier declines the claims, on among other grounds, the point that the claim is vague and indefinite and does not identify the Claimants with the required particularity. It is not necessary to reach precisely that point because it is interwoven with a point which the Board finds is fatal to the claim.

It is generally recognized that employees who are instructed by Carrier to perform an act which is not detrimental to their health and safety are required to "obey now and grieve later." That is, Carrier instructions which are alleged to be in violation of the Agreement are to be carried out, and any alleged infringement on employees' rights under the Agreement is to be determined through the grievance procedure. The employees take the position that Carrier was not authorized by the Agreement to require physical examinations. An employee who reported for a physical examination and lost time from work thereby, or who was prevented from working would be in a position to challenge Carrier's right to require the examination and to seek reimbursement for his loss. An employee who refused to comply with Carrier's request has forfeited his right to grieve and has also made it impossible to determine whether or not he stood ready to work on the date in question. It is ordinarily understood that employees who are on a work stoppage are not considered to have left that status until they make an unequivocal offer to return to work. No such offer can be found in the record before the Board. Even after the General Chairman and the attorney conferred with the District Judge, the employees still refused to return to work until the General Chairman personally appeared at Jamaica station. They were unwilling to accept his word over the telephone. Given all of these facts and circumstances, the Board believes that it must deny the claim.

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

That the claim should be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.

