

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22881
Docket Number SG-22252

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

(a) The Southern Pacific Transportation Company (Pacific Lines) has violated the agreement between the Company and the employees of the signal department represented by the Brotherhood of Railroad Signalmen effective Oct. 11, 1973, and particularly Rules 72 and 74 by requirement of Mr. Rasco to have physical examination prior to returning to work.

(b) Claimant F. P. Rasco be allowed eight (8) hours pay at his regular straight time rate for time spent to have required physical examination."

/Carrier file: 011-221 (R)/

OPINION OF BOARD: At the time of the incident at issue, Claimant F. P. Rasco, Signalman with headquarters at Santa Rosa, New Mexico, had been absent because of illness since December 8, 1975. His personal physician issued Claimant a release for return to work on Monday, June 21, 1976. Claimant then notified Carrier of his intent to return to work at 7 am Monday, June 28, 1976, on his Signalman position at Santa Rosa. On June 23, 1976, Carrier informed Claimant that before he could return to work he would have to be examined by a doctor approved by Carrier. An appointment was made for Claimant for 11 am Friday, June 25, 1976, in the office of a doctor in Carrizozo, New Mexico--a round trip of approximately 270 miles from Claimant's home--and Claimant reported for that exam as scheduled.

Claimant reported for work Monday, June 28, 1976 and worked that day, June 29 and June 30. On the 30th he was advised that he was being removed from service pending review of his medical records by Carrier's Chief Medical Officer. Under date of July 28, 1976, Claimant was notified that he would be permitted to return to work, which he did on August 2, 1976. Claimant submitted a timeroll for eight hours' pay each day, June 25 and June 28-30, 1976. After he received pay for those four days, he received notification that it would be necessary to return the pay he received for June-25, which Carrier accomplished by withholding that amount from subsequent paychecks.

The Organization filed a claim on behalf of Mr. Rasco for restitution of the eight hours pay for June 25, 1976. Appeal procedures were exhausted up to and including the highest officer designated by the Carrier to handle such claims. The claim was denied at each step and is properly presented for review by this Board.

The Organization bases this claim for pay on the date of Mr. Rasco's physical examination upon Rules 74 and 72 which read as follows:

"Rule 74. Examination. Such examinations or re-examinations as employees may be required to take, shall, if possible, be conducted during regular working hours without deduction in pay therefor."

"Rule 72. Loss of Earnings. An employee covered by this agreement who suffers loss of earnings because of violation of misapplication of any portion of this agreement shall be reimbursed for such loss."

We find the contract language cited above to be clear and unambiguous. At the time of the physical examination, Claimant was on a leave of absence. The examination could not, therefore, "be conducted during regular working hours." Moreover, since Claimant had no anticipated earnings for June 25, 1976--he was to return to work three days later--he cannot be said to have suffered a deduction of pay. It cannot be found, then, that Rule 74 was in any way violated. Absent a finding of violation of Rule 74, the Organization's claim of a violation of Rule 72 is rendered moot. Accordingly, the Claim is denied.

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 not violated.

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 18th day of June 1980.