

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23331  
Docket Number MS-23281

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (J. J. Carrier  
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of J. J. Carrier that:

(1) During a twenty-four hour period, from 4 PM, September 28 to 4 PM, September 29, 1978, the Carrier required Claimant to take a company physical examination in addition to his regular eight-hour assignment; Carrier refused to compensate Claimant for time in excess of eight hours in violation of Rule 49(a) of the SOO-BRAC Clerks' Agreement.

(2) The Carrier shall now be required to compensate Claimant for five hours and twenty minutes, time and one-half, at the Assistant Chief Yard Clerk's rate for September 29, 1978."

OPINION OF BOARD: Claimant, J. J. Carrier, claims five hours and twenty minutes at time and one-half at the Assistant Chief Yard Clerk's rate for September 29, 1978. Claimant argues that during a twenty-four hour period covering September 28 through September 29, 1978, he was required to take a physical examination in addition to his regular eight-hour assignment. For this reason, Claimant alleges that he is entitled to compensation under the terms of Rule 49(a) of the Agreement which states:

"RULE 49. OVERTIME

(a) Except as otherwise provided in Rule 52 (Call rule), time in excess of eight (8) hours, exclusive of the meal period, on any day (24-hour period) will be considered overtime and paid for on the actual minute basis at the rate of time and one-half."

An analysis of the record indicates that the claim must be denied. Claimant has made a series of assertions which have no factual basis in the record e.g. that Carrier's decision to have him take a physical examination was arbitrary or discriminatory. Similarly, conclusions raised by Claimant in his submission to this Board are not supported by the evidence in the record.

For Claimant to be sustained, he would have to establish some-specific schedule rule or practice on the property requiring compensation for time spent in taking a physical examination. He has failed to establish any such rule. It is well settled that off-duty time spent for the purpose of taking a physical examination is not "work" for which compensation is required. See Awards 14049, 3302, 17539. These Awards follow a long line of Awards indicating that Carrier has discretion to order a physical examination of an employe who it believes has a possible physical disqualification. See, for example, Awards 6850 and 8035.

We will 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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Parker  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.

