

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25939
Docket Number SG-25801

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Seaboard System Railroad
(Louisville & Nashville Railroad)

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the former Louisville and Nashville Railroad, now Seaboard System Railroad:

Claim No. 1, Carrier file 15-29 (83-31) R2

Claim on behalf of G. L. Choate for reimbursement for expenses incurred by him in connection with being required to travel from his home to Evansville, Indiana, on instructions from the Carrier to take a physical examination on August 19, 1983: \$71.40 mileage, \$11.34 lunch, \$0.20 postage.

Claim No. 2, Carrier file 15-29 (83-34)

Claim on behalf of G. L. Choate for reimbursement for expenses incurred by him in connection with being required to travel from his home to East St. Louis, Illinois, on instructions from the Carrier to take a physical examination on September 1, 1983: \$12.62 mileage, \$10.62 for lunch, \$2.20 for parking, \$0.20 postage."

OPINION OF BOARD: By letter of August 12, 1983, the Carrier ordered the Claimant to submit for a physical examination. Claimant, who lived in Belleville, Illinois, was notified that subject to passing a physical examination, he would be returned to the System Signal Tester Helper Position he had held some seven (7) years earlier. Claimant reported for the physical examination in Evansville, Indiana and submitted expenses for mileage, lunch and postage. The Carrier denied those expenses in a September 12, 1983 letter. By letter of August 26, 1983, Carrier's Chief Medical Officer requested a further physical examination in St. Louis, Missouri. Following that examination Claimant submitted expenses for dinner, mileage, parking and postage. Carrier denied the expenses.

The Organization in support of Claimant filed appeal letters dated September 20, and October 25, 1983, for reimbursement due to a violation of Rule 29(a) which states:

"Rule 29. EXPENSES

(a) Employees sent away from home station or territory will be reimbursed for actual additional necessary expenses incurred for meals and lodging. Expenditures of any other kind which any employee is instructed to incur will also be reimbursed."

The Carrier denied the Claim stating that it was under no Agreement Rule requiring reimbursement for physical examinations.

This Board notes that there is a great deal in the record which is not germane to the issue at bar. This case centers upon the interpretation of Rule 29(a) and specifically its applicability to reimbursing expenses incurred by Claimant when ordered by Carrier to undergo a physical examination prior to returning to service. In the mind of this Board, if Rule 29(a) is controlling, then the Claimant is entitled since "expenditures of any other kind which any employe is instructed to incur" will be reimbursed.

The weight of the evidence for any claim is the responsibility of the moving party. The evidence which was presented by the Organization on the property failed to substantiate that Rule 29(a) had applicability to physical examinations in the circumstances of the instant case. Under the existing Schedule Rules, this Board finds no evidence that the stated Rule, or past history and settlements on the property, would support such an interpretation. The Rule does not mention physical examinations, nor does the Rule show language consistent with that intent. It is the determination of this Board after careful and thorough review of the instant case that the burden of proof has not been met and absent therefore such proof, this Board will not disturb Carrier's decision in the case at hand. This finding is consistent with numerous past Awards of the National Railroad Adjustment Board (Third Division Awards 20632, 17539 and Fourth Division Awards 2304, 1990 inter alia).

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

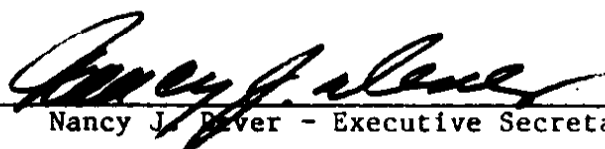
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. River - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.