

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31058
Docket No. CL-30395
95-3-92-3-337

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(Monongahela Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of
the Organization (GL-10799) that:

- (a) Carrier violated the Agreement between the parties when on September 4, 1990, it failed or refused to compensate Extra Clerk/Driver Mrs. S. R. McAtee Long account her being required by the Carrier to submit to a return-to-work physical examination.
- (b) As a result of the aforementioned violation Carrier shall now be required to compensate Mrs. S. R. McAtee Long for eight (8) hours at the pro rata rate of pay for September 4, 1990."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the Carrier's behest, Claimant, an Extra Driver, underwent a physical examination during the day on September 4, 1990. Claimant seeks eight hours of straight time pay for being required to submit to an other than return-to-work physical examination.

Rule 45(b) provides:

"When an employee is directed by the Company to report for a physical examination (other than return-to-duty physical), he will be reimbursed by the Company for any reasonable traveling expenses incurred and shall be compensated for any time lost as a result of taking such an examination. If the examination is required on the employee's rest day, he shall be paid eight (8) hours' pay at the straight time rate."

When the Carrier initially denied this claim, it characterized the September 4, 1990 examination as a return-to-work physical examination. However, on appeal, the Carrier related that the examination was an extension of Claimant's periodic physical examination. For the first time, in its Submission before this Board, the Carrier asserted that, due to an unspecified condition, it withheld Claimant from service following the periodic physical examination which she had taken on August 7, 1990. Thus, the September 4, 1990 examination could be construed as a return-to-work physical examination which is beyond the purview of Rule 45(b).

However, on the property, the Carrier never documented a reason for the September 4, 1990 examination. In any event, the second examination was performed at the direction of Carrier and, because this Board cannot consider the facts which appear for the first time in the Carrier's Submission, the September 4, 1990 examination constituted a supplement to Claimant's periodic physical examination rather than a return-to-work physical examination. Thus, Rule 45(b) applied.

The record reflects that Claimant would have been able to perform service as a Driver during the day on September 4, 1990 because drivers with less seniority than Claimant worked. Rule 45(b) provides that an employee undergoing a physical examination shall be paid for any time lost, and thus, this Board sustains the claim. The Carrier shall pay Claimant eight hours of straight time pay at the rate in effect on September 4, 1990.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.