

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32228
Docket No. SG-31785
97-3-94-3-48**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Co. (CNW):

Claim on behalf of D.L. Bogle for payment of 64 hours at the straight time rate, and for reimbursement of expenses incurred by the Claimant in complying with Carrier’s instructions to undergo a physical examination, account Carrier violated the current Signalmen’s Agreement, particularly Rule 11, when it removed the Claimant from service from July 6 to July 15, 1992, and required the Claimant to submit to a physical examination without the agreement of the General Chairman. Carrier’s File No. 79-93-9. General Chairman’s File No. S-AV-142. BRS File Case No. 9209-CNW.”

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 were given due notice of hearing thereon.

The Claimant took a physical examination on or around July 3, 1992 to supervise a Boy Scout outing into the mountains. He was informed that he should do a follow-up with a Physician's examination due to an irregular heartbeat. The Claimant informed the Roadmaster that he would need time off to obtain the information necessary to participate in supervising the Boy Scout outing. The Roadmaster notified the Signal Supervisor of the request, who notified the Medical Department. The Claimant was notified by telephone on July 5, 1992 that he was not to report to work the following day. When Claimant reported, he was not permitted to work and informed that until he obtained a release from his Doctor, he was out of service.

The Organization alleges violation of Rule 11 in that the Claimant should not have been removed from service. The Organization takes issue with virtually all elements of Rule 11, in that this was not an emergency; the examination should have been performed on company time and there was no agreement between Labor Relations and the General Chairman.

The Carrier argues that it acted appropriately. The Claimant supplied information to his Foreman that he had an irregular heartbeat. The Carrier maintains that for the safety of the Claimant, other employees and the Company, it had to assure that the Claimant was medically able to safely perform service. The Carrier asserts that this should be considered an emergency and that Rule 11 was not violated in this instance.

Rule 11 comprises many agreements including:

".... physical examinations, will if possible, take same during regular working hours, without deduction in time therefor... or where the employee is required to travel outside of working hours, such time, including time traveling and waiting will be paid for at straight time.

... Except in an emergency, an employee will not be removed from service until it is agreed between the officer in charge of labor relations and the General Chairman that the employee is unfit to perform his usual duties..."

The facts of this case prove that the Claimant was removed from service. There is no evidence whatsoever to support an emergency. There is no evidence to suggest that the Claimant was unable to safely perform his duties or that the initial examination by a Nurse Practitioner suggested that the Claimant was unfit to report to duty. The Carrier's concern is justifiable, but its actions are a violation of the Rule, supra. Clearly, the Carrier had an obligation if it felt compelled to remove the Claimant from service to notify the General Chairman. This was not done and the Agreement was violated. The claim is sustained.

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 17th day of September 1997.