Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36310
Docket No. TD-35856
02-3-99-3-851

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

PARTIES TO DISPUTE: (American Train Dispatchers Department
( Brotherhood of Locomotive Engineers
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Claim one days pay at the straight time rate of pay for dispatchers as a 'Sick Day' for Friday, November 20, 1998."

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, a Train Dispatcher at the Carrier's Minneapolis, Minnesota, Dispatching Office, notified the Carrier, on November 13 that he desired to be absent from his regularly scheduled shift on November 20, 1998 to undergo a Company required physical examination. The Carrier requires certain employees, including Train Dispatchers to periodically undergo a physical examination to establish that they are physically fit for continuing duty. The Carrier honored the Claimant's request and thus, the Claimant was relieved of duty on November 20, 1998. The Claimant underwent the physical examination. In this claim, the Claimant seeks a day's pay for

sick leave benefits per Rule 51 of the applicable Agreement based on his November 20, 1998 absence.

By Memorandum of Agreement dated October 30, 1985, the Organization and the Carrier amended certain portions of Rule 51. The first paragraph of the October 30, 1985 Memorandum of Agreement provides:

> "Rule 51, Sick Leave Benefits of the Schedule Agreement dated July 15, 1985, will be amended to provide that the Carrier will not take exception to the utilization of sick leave by train dispatchers for medically related purposes provided sufficient advance notice is furnished the Carrier prior to the utilization of sick leave in this manner and provided that such layoff will not result in hours of service violations and sufficient relief is available."

This case centers on the meaning of the phrase, ". . . medically related purposes . . ." in the October 30, 1985 Memorandum of Agreement. Both parties assert that the phrase is clear and unambiguous yet, they advance differing interpretations of the language in the phrase. The Organization alleges that the phrase encompasses any physical examination while the Carrier contends that the phrase does not cover required periodic physical examinations. More specifically, the Organization argues that the physical examination which the Claimant underwent on November 20, 1998 was a medical appointment and such appointments are medically related. On the other hand, the Carrier contends that the phrase excludes periodic physical examinations because such examinations are not the same as an illness or any other medical condition that necessitates treatment.

The phrase, "medically related purposes," is vague with potentially broad implications. Therefore, the breadth of what sort of absences would be covered by the phrase is not defined by the express language in the first paragraph of the October 30, 1985 Memorandum of Agreement. Therefore, the Board must consider extrinsic evidence such as negotiating history and past practice to determine the parties' intent.

The record includes a January 10, 1990 letter from the Organization's former Office Chairman, who negotiated the October 30, 1985 Agreement. The Office Chairman wrote that the Agreement was intended to cover, "physicals" and not "just emergencies." This statement is of little help to the Board in resolving this dispute for

two reasons. First, the former Office Chairman's statement refers to physical examinations but not Company required periodic physical examinations. When an employee visits a medical practitioner seeking treatment for an illness or an injury, the visit is often referred to as an examination. Second, the Office Chairman's assertion that the Memorandum of Agreement was intended to cover more than emergencies, merely signifies that the parties intended to include medically related purposes that were not emergencies. The Office Chairman did not clearly define the scope of non-emergencies, but one can infer that he was referring to an employee seeking treatment for a non-emergency illness or injury. The Claimant went for a routine examination unassociated with any illness or injury. In sum, the Office Chairman's statement is not dispositive about whether an employee who goes to the doctor to undergo a Company mandated periodic physical examination is covered by Rule 51 because the periodic physical examination is routine rather than treatment for an injury or illness.

The Carrier demonstrated that, in the past, it has not afforded sick leave benefits to employees who were off work to take Company required periodic physical examinations. Moreover, according to the Carrier, the Organization never filed a claim challenging this historical past practice. If the parties intended to compensate employees who were absent because they took Company mandated periodic physical examinations, claims surely would have been filed between 1985 and 1998. While the Organization took exception to the existence of this past practice, the Organization did not come forward with any evidence that it had, in the past, filed claims or that the Carrier had paid employees, including the Claimant, for prior Company required periodic physical examinations.

Thus, the clear, continuous and uninterrupted prior practice supports the Carrier's construction of the phrase, "medically related purposes."

Based on the past practice, this claim must be denied.

## AWARD

Claim denied.

## ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of November 2002.