

PUBLIC LAW BOARD NO. 4450

AWARD NO. 41
NMB CASE NO. 41
UNION CASE NO. C-233-26
COMPANY CASE NO. 9302598

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
(Western Region-Feather River)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Claim of Engineer A. G. Ray for three hours' pay required physical examination for FRA license as shown on timeslip #06A dated June 7, 1993.

OPINION OF BOARD: On June 19, 1991, the Federal Railroad Administration, (the FRA) issued a final rule establishing qualification standards for locomotive engineers. 49 CFR 11, Subpart C, Sections 240.201 (e) and 240.207 (d) read in pertinent parts as follows:

"(e) After December 31, 1991, no Class I railroad (including the National Railroad Passenger Corporation) or railroad providing commuter service shall designate any person it deems qualified as a designated supervisor of locomotive engineers of initially certify or recertify a person as a locomotive engineer in either locomotive or train service unless that person has been tested, evaluated, and determined to be qualified in accordance with procedures that comply with subpart C."

"(d) If the examination required under this section discloses that the person needs corrective lenses or a hearing aid, or both, either to meet the threshold acuity levels established in §240.121 or to meet a lower threshold determined by the railroad's medical examiner to be sufficient to safely operate a locomotive or train on that railroad, that fact shall be noted on the certificate issued in accordance with the provisions of this part."

(e) Any person with such a certificate notation shall use the relevant corrective device(s) while operating a locomotive in locomotive or train service unless the railroad's medical examiner subsequently determines in writing that the person can safely operate without using the device."

By letter of May 17, 1993, Carrier's Department of Engineer Certification and Licensing notified Claimant that his Locomotive Engineering License would expire on his upcoming birthday and that renewal would require review of the National Driver Register and completion of vision and hearing acuity examinations. Carrier referred Claimant to a list of Authorized Examiners and directed that the original test results be returned to the Union Pacific Railroad Health Services Department.

Claimant underwent the hearing and sight examinations on June 7, 1993, following which he submitted Trip Report 06A reading in pertinent as follows:

"Claim 3 hr pay at yard rate acct of taking company required physican (sic) examination. This Claim is per B.L.E. Schedule Rule 76 b."

Carrier denied the claim on asserted grounds that: "Examination required by FRA in order to obtain engineer certification license is not payable under Rule 76." The matter remained unresolved on the property and thus comes to the Board for final and binding determination.

The contract language which governs this case appears in Rules 108 and 76, as follows:

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Rule 108. No person defective in hearing, sight, or color perception, shall be employed in any branch of service involving the use of signals or movement of trains.

All persons thus employed will be required to pass examination by one of the authorized examiners as to hearing, sight and ability to distinguish colors.

The use of glasses for refraction and age shall not be held as cause for rejection of application.

Re-examination will be required as follows:

(a) Once in every four years.

Rule 76. (As revised October 16, 1955.) Engineers required by the Company to attend rules instruction cars or investigations (and not found at fault at such investigation) or required to report for physical examination shall be compensated for such attendance as follows:

(b) If required to attend rules instruction cars or investigations, or required to report for physical examination at engineer's terminal or layover point and no time is lost, the engineer will be compensated at the pro rata rate per hour paid him for the last service performed for actual time in attendance with a minimum of three (3) hours and a maximum of eight (8) hours."

In denying the claim, Carrier points out that the annual sight and hearing examination for Engineer certification is "required by the FRA" and argues that the compensation language of Rule 76 applies only if the examination is "required by Carrier". In our considered judgement, that argument misconstrues the effect of the FRA regulation as well as the language and the inherent meaning and intent of Rule 76. It is worth noting initially that the narrow construction urged by Carrier is not necessarily dictated by the words of the opening

paragraph of Rule 76. The phrase "by the Company" which clearly qualifies the subjects of required attendance at rules instruction and investigations in which no fault is determined is not clearly and unambiguously applicable to subject of required physical examination. Moreover, it is a fundamental tenet of contract interpretation that agreement provisions are to be construed as parts of a cohesive document rather than as isolated pieces. Thus, the application of Rule 76 in this situation must be considered in conjunction with the requirements of Rule 108.

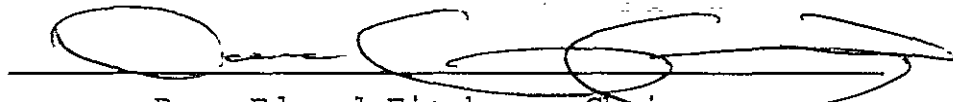
Clearly, the Parties intended that hearing, sight or color perception examinations required by Rule 108 be covered by the compensation provisions of Rule 76 (b). As written, Rule 108 specifies re-examination at least once every four years but more often in the event of certain overriding circumstances. The FRA regulations now effectively invalidate the "once in every four years" language of Rule 108 and replace it with a legal requirement that hearing, sight, or color perception re-examinations be done annually rather than in every four years. Inclusion of such required physical examinations under Rules 108 and 76 (b) is manifestly more consistent with the language and intent of those Rules than exclusion. Based upon all of the foregoing, the claim is sustained.


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AWARD

- 1) Claim sustained.
- 2) Carrier shall implement this Award within thirty
(30) days of its execution by a majority of the Board.


Dana Edward Eischen, Chairman
Dated at Ithaca, New York on March 13, 1995


Union Member


Company Member