

AWARD NO. 95
Case No. 102

Organization File No. 106-94
Carrier File No. 940187

PUBLIC LAW BOARD NO. 4746

PARTIES) INTERNATIONAL ASSOCIATION OF MACHINISTS
) AND AEROSPACE WORKERS
TO)
)
DISPUTE) UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

That the Union Pacific Railroad Company (hereinafter referred to as Carrier or Company) violated Rule 32 of the Current Controlling Agreement dated June 1, 1960, between the International Association of Machinists and the Missouri Pacific Railroad Company, when it unjustly assessed Machinist R. E. Swanger (hereinafter referred to as Claimant), a thirty (30) day deferred suspension on March 22, 1994, for allegedly violating General Rules A, B, 600 and 607 of Form 7908, Safety, Radio and General Rules for All Employees.

1. That the Union Pacific Railroad Company remove the thirty (30) day suspension from Claimant's record.
2. That the Carrier expunge from Claimant's personal record file all information pertaining to this instant dispute.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated May 19, 1989, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

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By letter dated December 21, 1993, Manager of Operations LeRoy Showers directed Claimant to report for a physical examination to determine if a reasonable accommodation or modification could be made to allow him to return to work from his medical leave of absence. Claimant did not report for the examination, and was consequently directed to attend an investigation at which he was charged with insubordination. Following the investigation, Claimant was assessed a thirty (30) day deferred suspension.

Carrier asserts it had a right to require Claimant to take a physical examination pursuant to its obligations under the Americans With Disabilities Act. It notes that Claimant was on medical leave due to an on-duty injury. According to Carrier, this is simply a matter of Claimant's duty to adhere to the fundamental principle of "comply now, grieve later."

Documentation submitted by Claimant at the investigation shows that he was receiving a regular annuity from the Railroad Retirement Board effective July 1, 1992. This is conclusive evidence that Claimant had retired from his railroad employment as of that date. The fact that Claimant, for some reason, was still carried on the seniority roster is immaterial. As Claimant was no longer an employee of the Carrier, Carrier had no authority to direct him to take a physical examination. It follows, therefore,

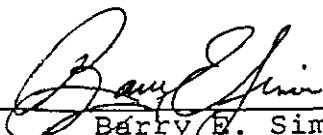
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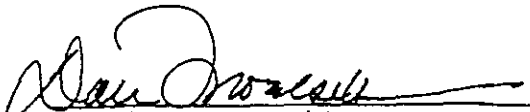
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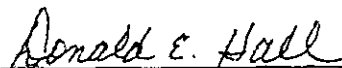
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that it also had no right to discipline him for not taking the examination. The discipline, accordingly, must be reversed.

AWARD: Claim sustained.


Barry E. Simon
Chairman and Neutral Member


Dan A. Moresette
Carrier Member


Donald E. Hall
Employee Member

Date: March 23, 1995
Arlington Heights, Illinois