

PUBLIC LAW BOARD NO. 2774

Award No. 124

Case No. 124

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier's withholding Claimant D. L. Henderson from his rightful position, beginning July 21, 1983, through August 3, 1983, was without just and sufficient cause and in violation of the current agreement.
2. That claimant now be compensated for all work days beginning July 21, 1983, through August 3, 1983."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein, as a result of Award No. 39 of this Board, was reinstated to service without pay for time lost dependent upon his passing a physical examination. Henderson passed the physical examination on February 11, 1983, but due to his seniority status was off in a force reduction move. He was recalled to service effective June 6, 1983, but was granted a leave of absence for the period from June 6 to July 6, 1983, and further a subsequent leave at his request to July 31, 1983. During claimant's leave of absence, Carrier found that he had been employed by another company prior to his reinstatement and had incurred an alleged back injury. The record indicated to Carrier that there had been no back x-ray given to him during his physical examination on February 11. Based on this fact, therefore, Carrier asked that Henderson have another physical examination, consisting of a back x-ray, before he could report for work on August 3. The record indicates that

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he took the back x-ray, passed the physical examination and reported to work as scheduled on August 3.

Petitioner argues that claimant had been required to take a second physical examination by Carrier which prevented him from reporting to his assignment until August 3. Therefore, petitioner insists that claimant was unduly and improperly withheld from service for the period involved in this claim.

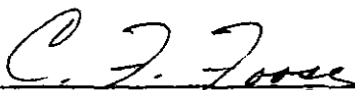
Carrier's position in this dispute is that it has the right and, in fact, the duty to make sure that the employee was physically able to perform his job. Based on the information Carrier received, Carrier believes that it was proper in determining that he needed an x-ray prior to returning to work. The period of time required to have the x-ray, as the Board views it, was not unreasonable and Carrier was well within its right in insisting that claimant have another physical examination in view of the long hiatus since he had last worked for Carrier and the information it had received. Based on these facts, therefore, the claim does not have merit and must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



G. M. Garmon, Carrier Member

Chicago, IL
December 17, 1984