

PUBLIC LAW BOARD NO. 4073

Raymond R. Hawkins
Chairman and Neutral Member

E.R. Kostakis
Employee Member

W.R. Caseholt
Carrier Member

Award No. 2

PARTIES TO DISPUTE:

District No. 19
International Association of Machinists
and Aerospace Workers AFL-CIO
and
Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad Company (hereinafter referred to as the Carrier) improperly withheld machinist R. Jennings (hereinafter referred to as the claimant) from service from April 11, 1984, until the present time.
2. That, accordingly, the carrier be ordered to restore claimant to service with seniority and service rights restored, with restoration of any monetary loss claimant suffered while being out of service.

FINDINGS OF FACT:

This Board finds that the parties herein are carrier and employee within the meaning of 45 USC 153, Second, and it has jurisdiction of the dispute that follows.

Claimant R.O. Jennings worked as a machinist at the carrier's diesel facilities in Kansas City, Kansas. On April 10, 1984, he was instructed by letter from the master mechanic to obtain the necessary forms from the carrier and to report to occupational Health Service, specifically to Dr. E.B. Kinports for a physical examination. Claimant did not comply with his instructions, therefore on the following day the master mechanic advised claimant he was being withheld from service until he did comply.

On May 6, 1984, the organization filed, on behalf of Mr. Jennings, a continuing claim beginning April 12, 1984. In its original form, the claim was based solely on an alleged violation of Rule 32(a), the discipline rule. On appeal to a higher level, the claim on June 14, 1985 was progressed on an additional issue, the allegation that claimant was not given a reason for carrier's requesting the physical exam.

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The agreement appeal process was unsuccessful and the dispute was referred to this Board for final determination. Hearing was held in Omaha, Nebraska. on May 6, 1986, both parties filed briefs and oral arguments were heard.

With respect to issue one above, awards of the National Railroad Adjustment Board and PL boards recognize the right of management to require an employee to undergo a physical examination when there is reasonable cause. Under these circumstances the discipline rule is not applicable. This principle is recognized in the Award 13126 cited by the appellant on page 4 of his submission.

The above raises issue two, did the carrier have reasonable cause to require claimant to undergo a physical examination? The record shows that this issue was first raised in conference on June 14, 1985, when the organization asserted claimant was not given a reason for being sent to a doctor for a special examination (employee's exhibit O, page 1). In the carrier's letter dated July 9, 1985, it denied the organization's allegation and attached a statement signed by two supervisors saying they advised claimant of the reason on April 10, 1984 when they gave claimant the letter directing him to undergo the examination. This document is probative evidence relevant to the issue here. The organization dismissed the supervisors' statement as merely self serving and given some fifteen months following the notice. Nevertheless, the organization did not raise the issue until its June 14, 1985 conference and it is hardly in a position to challenge the timeliness of the statement. The statement is prima facie evidence which the organization's only attempt at rebuttal was the personal opinion of a person lacking first hand knowledge of the incident.


The action of claimant relieving himself through his clothing and his explanation for doing so is not the type of employee conduct expected to be encountered in the daily work environment of a railroad shop. This abnormal behavior of claimant is reasonable cause for requiring him to be medically evaluated.

Upon a review of the entire record herein, it is the finding of this Board that carrier had reasonable cause to direct claimant on April 10, 1984 to submit to a physical examination. Even though carrier's action may be termed "unilateral", it was not unjustified, arbitrary, capricious or abuse of discretion.

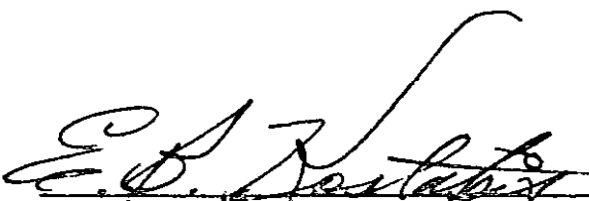
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AWARD:


The claim herein is denied.


Raymond R. Hawkins
Chairman and Neutral Member

For the IAM


President and
Directing General Chairman

For the Carrier


Assistant Director
Labor Relations

Albuquerque, N.M.
July 31, 1986