NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)
	) Case No. 112
and	)
	) Award No. 107
UNION PACIFIC RAILROAD COMPANY	)
	)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: June 4, 2007

STATEMENT OF CLAIM:

(1) The Agreement was violated when the Carrier failed and refused to reimburse Mr. B. Parker for mileage and meal expenses incurred in connection with his round trip transportation from Torrington, Wyoming to Cheyenne, Wyoming to attend a Carrier required physical examination on April 6, 2006 (System File C-0537-101/1425985).

(2) As a consequence of the violation referred to in Part (1) above, Claimant B. Parker shall now be compensated/reimbursed $31.11 for meal expenses as described previously and the Internal Revenue Service allowable amount of 40.5 cents per mile for 186.2 miles which is $75.41. The total amount claimed is $106.52.

FINDINGS:

Public Law Board No. 6302 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Claimant was on a medical leave of absence, beginning on March 5, 2004. To return from the leave, Carrier required Claimant to undergo a return-to-work physical exam in Cheyenne, Wyoming on April 6, 2005. The Organization contends that Carrier was obligated to reimburse Claimant for the cost of mileage and meals for his trip to Cheyenne for the return-to-work exam.

The Organization relies on Rule 14(b) which provides:

> **PHYSICAL EXAMINATION** – The Company will bear the expense of physical examination of applicants of the classes included in this Agreement who are required under the Company's rules to undergo a physical examination to determine their fitness for the work required and to protect the health and safety of employees.

The Organization further relies on NRAB Third Division Award No. 30678. That Award, between the Organization and another Carrier, interpreted an agreement provision that read, "The Company will bear the expense of physical examinations when required by the Company." The Board interpreted the word "expenses" to include mileage and meals that the employee incurred in traveling to the location at which a required return-to-work physical was conducted. The Board reasoned:

> [W]e note that dictionary definitions of the term "expenses" typically define the word as a financial outlay or expenditure. That definition, we find, is susceptible of an interpretation broad enough to include Claimant's mileage and meal expenses. Although it was certainly within the prerogative of Management to determine where Claimant was required to take his physical, it was also Carrier's responsibility to bear the cost of those expenses incurred in connection with the physical examination. Here, Claimant was required to travel over 500 miles round trip, over a period of 12 hours, to present himself to Carrier's physicians in Detroit. While he was not on assignment, and therefore no wages are due, we do find that his other out-of-pocket expenses should have been reimbursed in accordance with Rule 42.

Neither party has offered any evidence of the practice on the property, with respect to reimbursing mileage and meals for travel to return-to-work physical exams. Carrier concedes that its practice is to pay the physician's fee and other costs of the exam and that it is obligated to do so. Of course, as the moving party, the Organization has the burden to prove a practice of paying mileage and meals. Because there is no evidence of such a practice, the Organization relies on the language of Rule 14(B) alone and urges that this Board interpret it in accordance with Award 30678. However, on their face, the rules at issue in Award 30678 and Rule 14(B) are markedly different. The rule at issue in Award 30678 sweeps broadly, requiring payment of any physical examination required by the Company. Rule 14(B), on its face, applies only to "physical examination of applicants." The Organization has offered no evidence that an incumbent employee returning from a leave of absence is considered to be an "applicant." Accordingly, we conclude that the Organization has failed to prove that Rule 14(B) obligated the Carrier to pay for Claimant's mileage and meals.

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Award 107

AWARD

Claim denied.

Martin H. Malin, Chairman

D. A. Ring
Carrier Member
11-5-2007

D. D. Bartholomay
Employee Member
11-5-07

Dated at Chicago, Illinois, October 25, 2007