

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 117
UNION PACIFIC RAILROAD COMPANY) Award No. 95
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
B. W. Hanquist, Carrier Member

Hearing Date: January 7, 2008

STATEMENT OF CLAIM:

Claim on behalf of Machine Operator B. Martinez for sixteen (16) hours at his respective straight time rate and for \$236.74 in mileage, on account the Union Pacific Railroad Company has failed to compensate him for his full expenses incurred while attending a doctor's appointment on June 23, 2006 and on June 29, 2006 in San Antonio, Texas. This appointment was required by the Union Pacific Claims Department from San Antonio, Texas.

FINDINGS:

Public Law Board No. 6402 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.

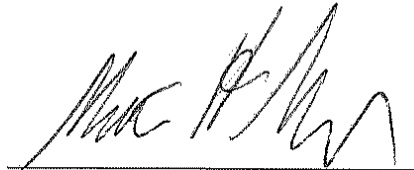
Claimant submitted a report of an on-duty injury, claiming injury as a result of inhalation of chlorine gas fumes. Claimant provided no supporting medical documentation. Consequently, Carrier directed Claimant to report for a medical evaluation. The instant claim seeks payment of wages and travel expenses for attending the medical evaluation.

During handling on the property, the Organization argued that Carrier's failure to pay Claimant for attending the medical evaluation violated Agreement Rules 1 and 2. Rule 1 is entitled "Seniority Datum." It provides how seniority is established and terminated, how to establish priority between two employees who hold the same seniority date and provides for a 60-day probationary period. Rule 2 is entitled "Seniority Rights." It provides for rights to bid for

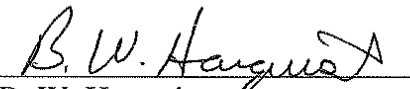
positions and to exercise seniority and displace junior employees. Nowhere does Rule 1 or 2 discuss, much less require, payment for attending a medical evaluation. The Organization has not established that any other Rule of the Agreement requires payment for attending a medical evaluation and Carrier's assertion during handling on the property that it has never paid for attendance at medical evaluations was never denied. In the absence of an Agreement provision to the contrary, "off-duty time spent for the purpose of taking a physical examination is not 'work' for which compensation is required." Third Division Award No. 23331.


AWARD

Claim denied.



Martin H. Malin, Chairman


B. W. Hanquist
Carrier Member 4-22-08

 4-22-08
T. W. Kreke
Employee Member

Dated at Chicago, Illinois, April 17, 2008