

PUBLIC LAW BOARD NO. 912

PARTIES) NORFOLK AND WESTERN RAILWAY COMPANY
TO)
DISPUTE) UNITED TRANSPORTATION UNION (C&T)

STATEMENT OF CLAIM: Claim of St. Louis Yardman John Lynch, Jr., who was dismissed as a result of investigation held on December 10, 1974 for not going to Company Doctor as instructed and therefore charged with insubordination.

FINDINGS: This Public Law Board No. 912 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was dismissed for insubordination. By certified mail the claimant was sent a letter by the superintendent which instructed the claimant to report to Dr. Lansche on November 13, 1974 for an examination. The claimant received the letter and refused to report for the physical examination. When he refused to comply with the superintendent's instructions, the claimant was charged with insubordination and dismissed from the service of the Carrier.

The claimant appeared at the investigation with his attorneys and a court reporter, but the Carrier would not permit the investigation to be held while the attorneys were present. Consequently, the investigation was delayed until the claimant could make arrangements to have a proper representative present.

The Organization contends that the Carrier was not entitled to a physical examination because the claimant had not requested to return to work. The Organization contends that if a man is physically fit to perform his duties that this is a question of fact to be determined by competent medical evidence. The Organization contends that the company doctor's findings are not controlling.

This is, of course, true, but neither are the employees' personal physicians' findings completely controlling. If the Board was to hold that the Company was not entitled to a physical examination, it would be a simple matter for an employee to obtain a doctor's report that he was unable to work, and the Carrier would be completely helpless.

When an employee has not worked for some period of time, the Carrier is certainly entitled to a physical examination. Many awards on the First Division, as well as Public Law Boards, have so held.

The Organization admits that the Carrier can request a physical examination of an employee which is reasonable and not arbitrary. Certainly the request for a physical examination under the circumstances herein is reasonable. The claimant had not worked in over thirty days and was contending he was injured. The Carrier was entitled to determine for itself if, in fact, the claimant was injured.

The claimant was guilty of insubordination. The claimant acted on the advise of his attorneys. Under the circumstances there is no justification for overruling the decision of the Carrier. Insubordination is a serious offense, and under these circumstances the Board finds no cause to overrule the Carrier's decision.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

St. Louis, Missouri
March 22, 1976