

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 54

Case No. 54

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: S. V. Powers

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed to properly compensate Mr. L. J. Sacher when he was required to report for a physical examination on October 9, 1987 (System Docket CR-3543).

(2) As a consequence of the aforesaid violation:

'We are asking that Mr. Sacher be paid 4 hours at the overtime rate for this examination on October 9, 1987. We are also asking that he be paid mileage for 45 miles which comes to 9.45.'

FINDINGS:

Upon the whole record and all the evidence, and after hearing on September 6, 1990, in the Carrier's Office, Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees with in the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

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DECISION:

The claim for compensation equivalent to four (4) hours overtime pay is sustained. The claim for payment of mileage for forty-five (45) miles is denied for lack of contract authority.

OPINION

The facts of this case are not in dispute.

The Claimant was medically disqualified from service due to testing positive for prohibited drugs during a return to duty physical conducted on March 30, 1987. Following a subsequent negative drug screen, the Claimant was medically qualified for work on May 13, 1987.

As a result of the initial positive drug screen in March 1987, the Claimant became subject to random drug tests under the Conrail Drug Policy.

On October 5, 1987, the Claimant received a hand-delivered letter at 10 A.M. directing him to report to a medical facility for a drug test, at 9 A.M. the same day. The Claimant reported the scheduling discrepancy to his Supervisor, who informed the Claimant that he had been rescheduled for the drug test at 8:15 A.M., Friday, October 9, 1987.

The Claimant stated that October 9 was his rest day, and asked his Supervisor if he must go on that day. The Supervisor said yes, and the Claimant complied. The Claimant submitted a claim for compensation and for mileage, due to being required to take a drug test on his rest day. The Carrier has denied the claim.

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Rule 22 reads as follows:

"RULE 22 - EXAMINATIONS--PHYSICAL AND OTHER

"When examinations are required by the Company, arrangements shall be made to take them without loss of time except:

(a) Examinations required of an employee returning from furlough, discipline, leave of absence or from absence caused by sickness or disability need not be given during the employee's tour of duty.

(b) Employees required to take examinations, other than those covered by paragraph (a) of this Rule outside the hours of their regular tours of duty will be paid therefore under the provisions of Rules 11 or 16, whichever is applicable."

The Carrier submits that its denial of the claim was proper, because the Claimant was not given a physical on October 9, 1987, but rather, was merely required to provide a urine sample, which took only a few minutes. The Carrier further submits that since the October 9, 1987 drug screen was required because of the Claimant's positive drug test on March 30, 1987, the October 9, 1987 drug screen was part of, or an extension of, the Claimant's return from furlough physical that was conducted on March 30, 1987.

* * * * *

The Carrier's reasons for denying the claim are arbitrary and unreasonable.

The Carrier has authority under Rule 22 to direct an Employee to submit to an examination at a time other than during his tour of duty; however, paragraphs (a) and (b) of the rule, in combination, make it clear that when the Carrier directs an Employee to submit to an examination during other than his regular tour of duty, such as the herein case of a rest day, the Carrier is required to compensate the Employee. The language in the rule simply cannot be read as requiring the restrictive definition of "examinations"

that would be implied if the Carrier's position in this case prevailed.

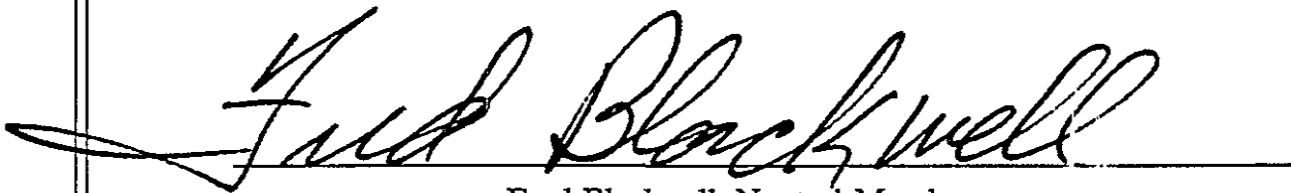
It is therefore found that the facts of this case come within the purview of Rule 22 (b). Accordingly, the claim will be sustained for four (4) hours overtime compensation; however, no cited Agreement provision authorized mileage and accordingly, the claim for mileage will be disallowed.

In view of the foregoing, and based on the record as a whole, the claim will be sustained as hereinafter provided.

AWARD:

The merit of the claim is established by the record as a whole. Accordingly, the claim is hereby sustained for compensation equivalent to four (4) hours overtime. There is no agreement authority requiring the Carrier to pay mileage in the facts of this case and hence the claim for mileage is disallowed.

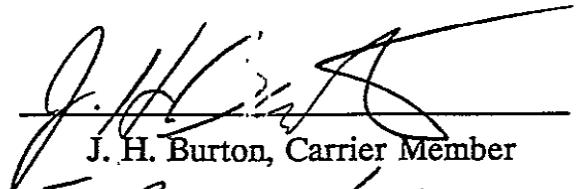
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

*I dissent the compensation
ordered is excessive.*

Executed on September, 1993⁵

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