

AWARD NO. 30  
ITEM NO. 162

SPECIAL BOARD OF ADJUSTMENT NO. 541

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement by failing to apply the provisions of the "Understanding on Physical Re-examinations" dated July 24, 1968, upon request of the Brotherhood in behalf of Willard Castle, Group 8, Machine Operator.

2. The Carrier be now ordered to promptly arrange with the Claimant's physician for a physical examination by a neutral physician.

3. The Carrier be required to apply the provisions of the "Understanding on Physical Re-examinations" in accordance with the results of this examination referred to in Part 2.

FINDINGS: As the result of back injuries sustained in an off-duty motorcycle accident, Claimant, a Class 8 operator, was absent from work for about nine months. When he returned to duty, he was first permitted to work but then disqualified from all service with Carrier on the basis of the latter's Chief Surgeon's report. Claimant's private physician, Dr. Tillotson, appears to have agreed with the Chief Surgeon's findings regarding Claimant's physical condition but took issue with the conclusions that Claimant could not perform the duties of his position. Petitioner requested Carrier to refer the matter to a neutral physician in line with the requirements of the Understanding on Physical Re-examinations entered into by Carrier and the Organization on July 24, 1968. Carrier declined on the ground that there was no dispute between its Chief Surgeon and Dr. Tillotson regarding Claimant's physical condition.

In our opinion, Carrier was in error, under the specific facts of this case, in refusing to agree to the appointment of a neutral physician. The awards cited by Carrier do not require a contrary interpretation.

AWARD: Claim sustained.

Dated at New York, N.Y. this 29th day of October, 1968.

/s/Harold M. Weston  
HAROLD M. WESTON, Neutral

/s/A. J. Cunningham  
ORGANIZATION MEMBER

/s/R. A. Carroll  
CARRIER MEMBER