

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13816
Docket No. 13708
04-2-03-2-53**

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Dispute – Claim of Employee

That the Union Pacific Railroad Company (hereinafter referred to as Carrier or Company) violated Rule 32 of the Current Controlling Agreement dated June 1, 1960, as subsequently amended, between the International Association of Machinists and the Missouri Pacific Railroad Company, (Employee’s Exhibit “R”) when it unjustly dismissed Machinist J. W. Cameron (hereinafter referred to as claimant) from service of the Carrier.

Relief Requested

That the Claimant be reinstated to service of the Carrier and that the Level 5 dismissal be expunged from the Claimant’s record.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On May 17, 2001, the Claimant was withheld from service for medical reasons. The Claimant was then directed to report for a fitness for duty physical examination, which resulted in a June 18, 2001 notification to the Claimant that he was not medically approved to return to work. By letter dated July 10, 2001, the Carrier notified the Claimant that he was dismissed because he was working for another employer while on medical leave. Claim was filed and that dispute was determined by PLB No. 4746, Award 173 which issued June 24, 2002. Award 173 found that "... we will direct that Claimant be reinstated to service" because he worked for the other employer prior to his being withheld from service. However, Award 173 found that "[b]ecause there is a legitimate question concerning his fitness to work, we will not award compensation for time lost."

After the issuance of Award 173, the Carrier attempted to ascertain the Claimant's fitness for duty in order to determine whether the Claimant could be reinstated in accord with the requirement of Award 173. The Carrier sent the Claimant letters dated September 12, 27, October 3 and 11, 2002, either instructing the Claimant to report for a medical examination to determine his fitness for duty, to report for duty, or report for duty or provide medical documentation.

The Claimant did not follow the instructions contained in those letters. Instead, the Claimant's attorney sent the Carrier a letter dated September 30, 2002 advising the Carrier that "... Mr. Cameron has not been cleared to return-to-work by his doctor ... Mr. Cameron plans to follow his doctor's orders ... [and] at this time, Mr. Cameron will not be returning to work since he is medically unable to do so." Another letter from the Claimant's attorney dated October 21, 2002 states that the Claimant "... is unable to return-to-work with the railroad due to his on-duty injury ... [and] he will not be attending the appointments referenced in your letter of October 11, 2002."

Notice of investigation issued November 25, 2002, with allegations that the Claimant was insubordinate by failing to comply with the instructions to report for medical examinations, provide medical documentation and/or report for work.

Investigation was held on February 5, 2003. The Claimant did not attend the investigation. The Claimant was dismissed by letter dated February 11, 2003 for failure to comply with instructions and insubordination.

Because the Claimant refused to attend the investigation, the evidence from that hearing is not disputed. The evidence in this record therefore shows that the Claimant was instructed by letters to report for a medical examination to determine his fitness for duty, to report for duty, or report for duty or provide medical documentation. The Claimant ignored and refused to comply with those instructions. Substantial evidence therefore exists to support the Carrier's determination that the Claimant failed to comply with instructions and was insubordinate. The Claimant is obligated to follow instructions given by the Carrier. Advice from the Claimant's attorney to ignore the Carrier's instructions does not negate the Claimant's obligation to follow those instructions. The Claimant failed to adhere to the fundamental requirement of labor relations that employees are to "obey now, grieve later".

The demonstrated misconduct of insubordination and failure to follow instructions is very serious. Under the circumstances, dismissal was not arbitrary.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 10th day of December 2004.