

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13892
Docket No. 13774
06-2-05-2-26

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen-Division of TCU
(Indiana Harbor Belt Railroad Company)

STATEMENT OF CLAIM:

- “1. The Indiana Harbor Belt Railroad Company, hereinafter referred to as Carrier, unjustly disciplined Bruce Dust, hereinafter referred to as Claimant, in violation of Rule 36 and possibly others of the Collective Bargaining Agreement (CBA).
2. The Carrier shall now be required to make Claimant whole for all losses including lost wages, insurance and all other benefits that are a condition of employment as a result of said discipline.”

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.

The Claimant was dismissed from service for his alleged failure to comply with instructions of the assistant chief mechanical officer as a result of an investigation held on June 3, 2004.

The Organization argued that, as a result of the hearing held on June 3, 2004, the Claimant was given zero credibility while the Carrier's witness was given full credibility. The Carrier had the attitude that the Claimant was guilty until proven innocent. The Claimant was assessed excessive discipline. The Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 36. The instructions to the Claimant were not as clear as the Carrier stated. The instructions given by Mr. Kelley were not explicit. The Carrier certainly could have gone to the hospital with the Claimant and then made a followup appointment for the Claimant. If the Carrier needed to have the Claimant see a physician before noon on April 23, 2004, it could have made an appointment for the Claimant, wrote him a note to that effect or have a railroad official accompany the Claimant to the hospital in order to avoid any confusion. The record shows that the Carrier was not at all concerned about the Claimant. In fact, the Claimant had to pay a \$20 taxicab fare to return to the property.

The Organization noted that its members should follow clear instructions. In this case, however, the instructions were never given in the manner that the Carrier asserted. The record shows that the hearing was neither fair nor impartial and that the discipline was excessive, arbitrary, capricious and discriminatory. The Claimant did inform the Carrier of the water main break. The Claimant was only concerned with his health and his attempt to see his personal physician. The Claimant was still on medical leave when the dismissal was administered. The entire record shows the Carrier's lack of concern or compassion during this frightening experience. The record clearly shows that the Claimant did go to the emergency room.

The services of this particular carman are not so necessary that the Carrier's operations would be interrupted if he is not able to work. The facts of this case are that the Claimant was asked to attend a meeting where he was overwhelmed by five Carrier managers. He felt he needed medical attention. He was taken to a local emergency room and held for almost four hours. He had to take a taxicab back to retrieve his personal belongings. The Claimant denied that he was ordered to report to the physician before noon on the following day, but he encountered one obstacle

after the other. The record shows that the Carrier has failed to prove that the discipline of dismissal was appropriate under these circumstances. Therefore, the claim should be fully sustained.

The Carrier's position is that the Claimant has a very poor work record with a tendency to do just whatever he pleases. The Carrier gave him a simple order. The Claimant was told to present himself to the Carrier's medical facility prior to 1200 hours on April 23, 2004, the day after the Claimant's visit to the emergency room. The Claimant was ordered to do this during duty hours. The Claimant failed to follow these very simple instructions. He decided on his own that he would not follow this reasonable order. Since he failed to comply with the Carrier's instructions and did not seek any advice from the Carrier's officials, the Claimant was found to be insubordinate and dismissed from service. The record shows that the Carrier has not acted in an excessive, arbitrary, capricious or discriminatory manner. Therefore, the claim should be denied.

Upon review of all the evidence, the Board finds that the Claimant was given a very simple instruction. That instruction ordered him to go to the Carrier's medical facility before noon on the day after he went to the emergency room. This is a reasonable instruction. The Claimant on his own, as he has done in the past, simply ignored these reasonable instructions from the Carrier. Given the Claimant's record with the Carrier, the seriousness of this offense, and the potential consequences of this offense, the Board finds that it cannot substitute its judgement for that of the Carrier. In addition, the Board notes that the Claimant is on a disability annuity under the Railroad Retirement Act.

Based on the above the Claim is denied.

AWARD

Claim denied.

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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 25th day of April 2006.