

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Burlington Northern, Inc.

Dispute: Claim of Employes:

1. That the Burlington Northern, Incorporated, unjustly dismissed Carman Kenneth Urban from service on March 10, 1972.
2. That accordingly the Carrier be ordered to reinstate Carman Kenneth Urban to service and compensate Kenneth Urban for all time lost, restoration of seniority, pass, vacation and Northern Lines Merger Agreement Protection, that the Carrier pay the premiums for hospital, surgical and medical benefits and pay the premiums for Group Life Insurance as well as all other benefits accruing other employes in service commencing March 10, 1972, and continuing until he is reinstated to service with this Carrier.

Findings:

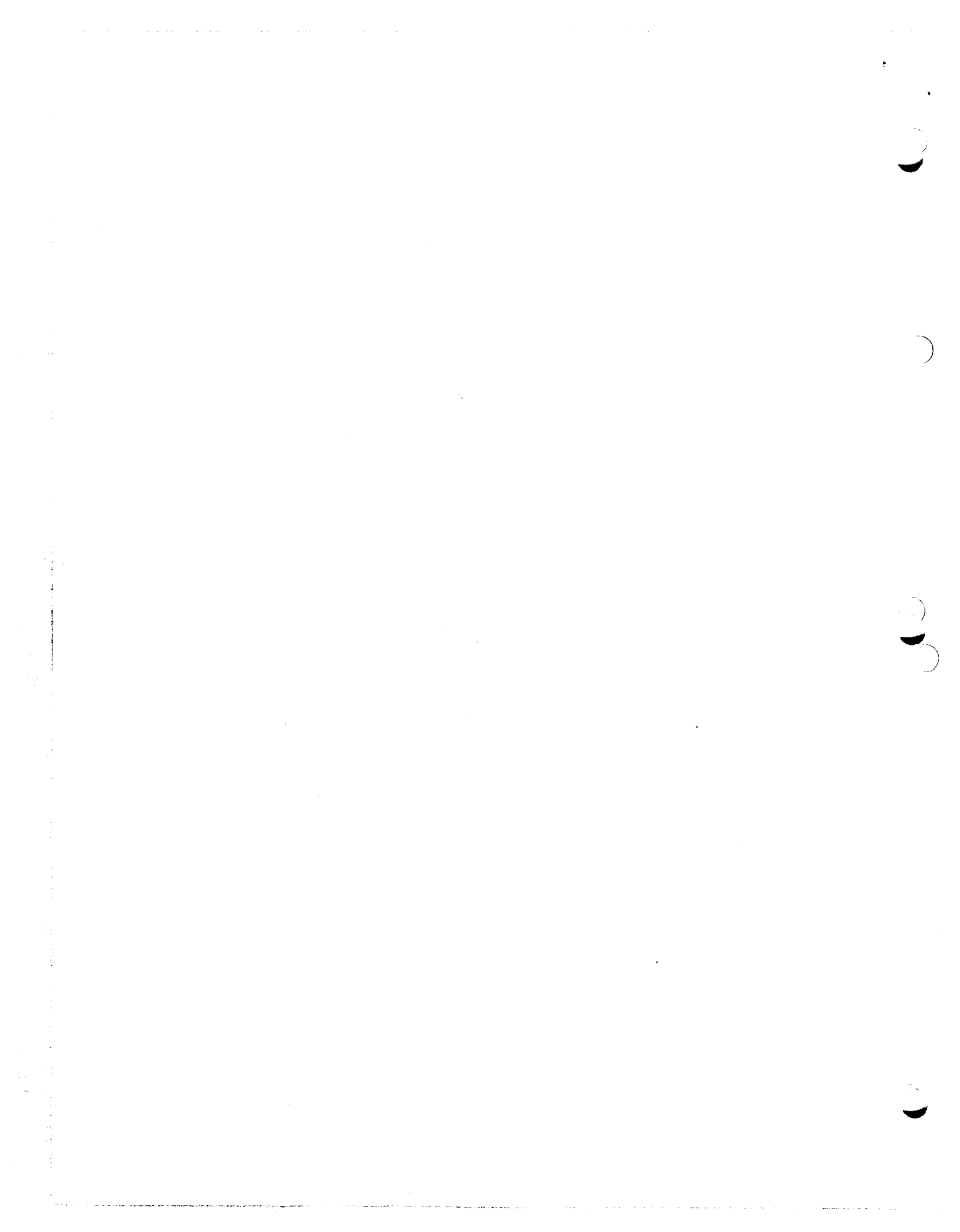
The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Carrier sent a letter to the Claimant on January 24, 1972 notifying him to report for work on or before February 1, 1972, "or make proper notification as to why you cannot return to work at that time, which must be backed up with a satisfactory doctor's order or other good reason." He was sent another letter on February 10, 1972 notifying him to appear for an investigation on February 18, 1972, "for the purpose of ascertaining the facts and determining your responsibility in connection with your failure to comply with instructions from proper



authority wherein you failed to report for services at the Superior Car Shop on February 1, 1972, as instructed in my letter dated January 24, 1972." After the investigation Carrier wrote the Claimant on March 10, 1972, in part as follows:

"Facts and testimony developed at this investigation clearly establish that you failed to comply with the provisions of Rule 700, 702, 702B of the Consolidated Code of Operating Rules.

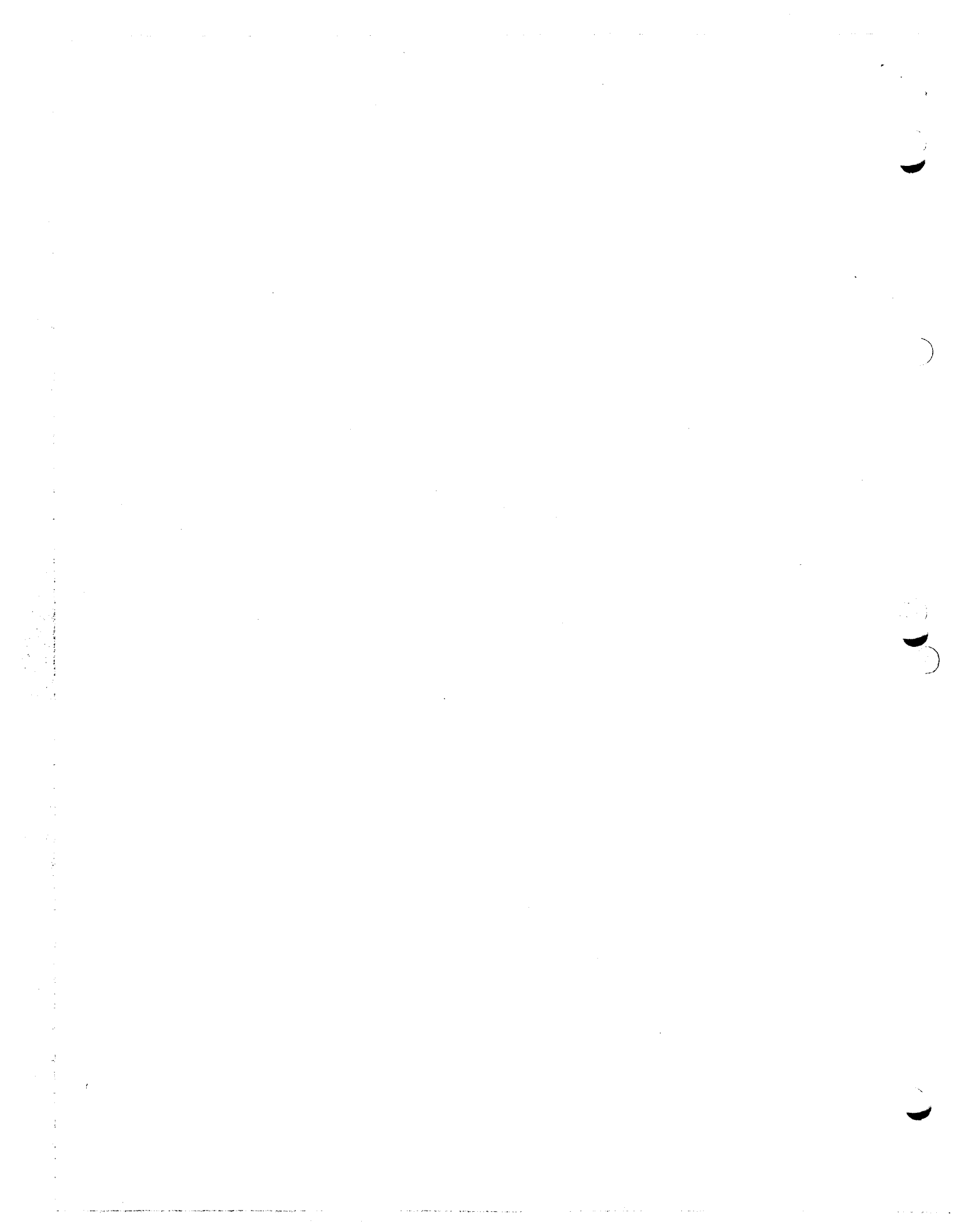
For your failure to comply with the provisions of these rules, you are dismissed from service of the Burlington Northern effective March 10, 1972."

Employees' principal contention is that violation of Operating Rules 700, 702 and 702(B) should not be considered because by invoking them the Carrier went beyond the scope of the investigation notice; Claimant was not being investigated for not reporting for duty on February 1, 1972 as directed in Carrier's letter of February 10, 1972.

Claimant did not report on February 1, 1972. He testified that he called on the telephone and reported that he would come in because he could not get a certificate from his doctor. His explanation why he could not obtain such a medical report is not plausible. It is highly improbable that his doctor would deliberately or negligently refuse a report which would have permitted the Claimant either to return to work or to explain the necessity for his extended absence.

Rule 702 says: "Employee must report for duty at the designated time and place . . ." Rule 702(b) says: "Employee must comply with instructions from proper authority." Both rules are directly related to the purpose of the investigation as contained in the letter of February 10, 1972. They need not have been specifically mentioned in that letter. He was directed to report for duty at a designated time and place - Rule 702 - and he failed to do so. He was instructed to do so by proper authority - Rule 702(B) - and he did not comply. Claimant knew why he was being investigated. Rules 702 and 702(B) do not enlarge upon the original charge, they rather supplement it.

Claimant was directed to report for work or advise the Carrier why he cannot return on the designated date supported by a doctor's certificate or other good reason. He did not report on February 1, 1972 as directed; he did not properly and adequately submit a doctor's report supporting his reasons for not being able to report on that date. His reasons for not reporting are untenable. He failed to observe the instructions and he failed to comply with directions from proper authority. His dismissal from service was not arbitrary, capricious, or discriminatory.



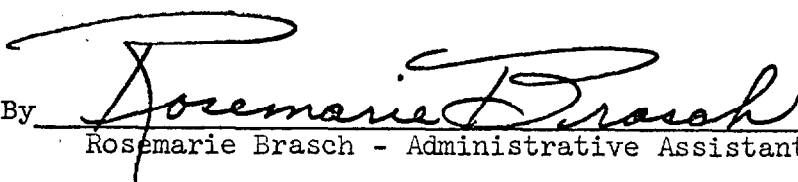
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of October, 1974.

