

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 10340
Docket No. 10500
2-EW-MNCR-'85

The Second Division consisted of the regular members and in addition Referee James R. Cox when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Metro-North Commuter Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, the Consolidated Rail Corporation (Conrail) unjustly dismissed Lineman W. Karabinos from service effective November 18, 1982.
2. That accordingly, the Metro-North Commuter Railroad Company be ordered to restore Lineman W. Karabinos to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Lineman's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his 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 employe or employes involved in this dispute are respectively carrier and employes 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.

Following his termination for unauthorized and deliberate misuse of Company property on December 21, 1981, and after the intervention of the Union, Claimant Karabinos, a Lineman employed by the Metro-North Commuter Railroad Company, was unilaterally offered reinstatement to Service subject to "our medical department's approval" and directed to report for a medical examination prior to returning to work. The evidence does not show any acceptance by either the Organization or the employe of the Carrier's offer of leniency nor agreement by Claimant to return.

The evidence indicates that Karabinos did report to the Carrier June 4, 1982 but refused an order to go to a Company Doctor for a return to work physical since he was "not ready to go back to work" because he wanted to get his insurance "straightened out first".

Claimant left the office and did not return. Following a trial, he was terminated for insubordination due to his refusal June 4, 1982 to obey an order to report to the Doctor for a physical examination, and for being absent without authorization from June 5, 1982 to June 18, 1982.

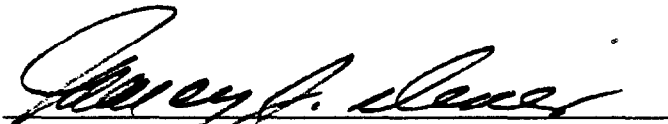
Since the record does not clearly show that the order to take the return to work physical was directed to Claimant after there had been acceptance of the offer to reinstate, the Board cannot find that Carrier had a basis to terminate for insubordination. The evidence did not show that Claimant, as of June 4, 1982, had been returned to Service. Due to these circumstances, the Carrier is to reinstate their offer of April, 1982 on the same terms and conditions including the requirement that Claimant establish that he is physically fit to return to work.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1985.