

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13503

Docket No. 13337

00-2-98-2-12

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

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the Committee Terminal Railway Company of the Union that:

- (1) That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13 when they arbitrarily dismissed Carman Donald F. Wandler from service as a result of an Investigation held on May 14, 1997.**
- (2) The carrier has now violated the time limits in this case and we consider the merits to be “unreachable.”**
- (3) That, accordingly, the Springfield Terminal Railway Company be ordered to return Carman Donald F. Wandler, when medically able, to service with compensation in the amount of eight (8) hours pay for each workday he is withheld from service, commencing the date he is released for duty subsequent to May 21, 1997, through and including the date he is returned to active service. The Carrier should also be ordered to reinstate Carman Donald F. Wandler with all seniority rights unimpaired, made whole for all contractual benefits including general wage increases, cost of living adjustments and overtime hours. All correspondence and record of the Investigation be removed from his Personal record and file.”**

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.

By letter dated April 30, 1997, the Claimant, with eight years of service at the Carrier's Lowell, Massachusetts car repair facility, was instructed to attend a hearing to determine his responsibility concerning his failure to respond to his Supervisor's written directive of April 18, 1997 regarding his medical status. Claimant was charged with insubordination and after an Investigation held on May 14, 1997 was dismissed from service.

The transcript of the Investigation establishes that the Claimant was off on medical leave for a heart condition and attempted to return to work on September 25, 1996. The doctor's note from New England Heart Institute tendered to his Supervisor at the time released him with the restriction of avoiding heavy isometric activity. In a conversation at that time, Supervisor Olson requested additional information from the Claimant concerning the medical restrictions, indicating that he could not schedule a return to work physical until he was able to work without restriction.

The Claimant did not have further contact with his Supervisor concerning either his medical condition or the noted restrictions. On February 3, 1997 he was sent a certified letter requesting additional documentation on his current medical status. He did not reply. On March 12, 1997 he was sent another certified letter requesting documentation on his medical condition and indicating that his failure to respond within five days may lead to discipline. The Claimant did not respond. Olson testified that he did not immediately issue a notice of Investigation because he wanted to give the Claimant the benefit of the doubt and an additional opportunity to respond. When he

did not do so, Olson issued a similar letter on April 18, 1997 giving the Claimant five days to provide medical evidence of his status or be subject to discipline. The Claimant received that letter on April 24, 1997.

The Claimant testified that he was seeing eight different doctors at that time, and he had a doctor's appointment scheduled for April 25, 1997, at which he requested a medical note be furnished to him. The Carrier issued its Notice of Investigation on April 30, 1997 when it had received no response to its April 18, 1997 letter. The Claimant stated that he did not receive anything from his doctor until May 7, 1997, and he forwarded it to the Organization rather than the Carrier. The Organization faxed the note to the Carrier on May 12, 1997. The medical form indicated that the Claimant was unable to return to work due to shoulder tendinitis and complications with his diabetes. Olson testified that this was the first time the Carrier was aware of these conditions, and that it never received any update on the Claimant's heart condition which was the reason for his prolonged absence. The Claimant stated that he did not respond to any of the Carrier's requests for medical information because he did not understand what specific information they wanted and thought Olson wanted a release without restrictions only, which he did not have.

The Carrier argues that its request for additional medical documentation was clear in September 1996 as well as in each of the following letters, and that the Claimant did not comply with his obligation to furnish such information, despite the lengthy time he was given to obtain it, and the two written directives from his Supervisor. It notes that the Claimant has a past disciplinary record which includes eight separate incidents for which he received a total of over 118 days suspension, and that two of such discipline cases were upheld by the Board in Second Division Award 13073 and Public Law Board No. 5805 Award 9. The Carrier contends that the Claimant's action constitutes insubordination which merits dismissal on his record.

The Organization argues first that the Board is precluded from reaching the merits based upon the Carrier's untimeliness in issuing its Notice of Investigation. It contends that the March 12, 1997 letter warned the Claimant that discipline would be issued if he failed to respond within five days, but that the Carrier waited until April 30, 1997 to issue its Hearing notice despite the provisions of Rule 13 which require that Notice of Hearing be sent to the employee within 20 days of the Carrier's first knowledge of the act for which he is being charged.

On the merits, the Organization contends that the Claimant saw a doctor the day after he received the April 18, 1997 letter, and that it was not his fault that the doctor took so long in issuing the requested medical note. It also alleges that the Carrier had no valid reason to request additional information since it was not prepared to return the Claimant until he had no restrictions, and that Olson had no business evaluating the Claimant's medical condition and any request for additional information should have come from the Medical Officer. The Organization argues that the punishment did not fit the crime, since the Claimant understood that he was to tender a medical note without restrictions, which he was unable to secure in the relevant period.

On the basis of a careful review of the record, the Board is of the opinion that the Carrier has sustained its burden of establishing by substantial evidence that the Claimant failed to respond to his Supervisor's clear directive to furnish medical information within a designated period of time. The Organization's timeliness argument is based upon the March 12, 1997 letter, which indicated that the Claimant may be subject to discipline if he failed to respond. The Carrier chose to give the Claimant additional time to secure documentation. It did not charge him with violating the March 12, 1997 directive, but with violating the April 18, 1997 written directive, which gave him an additional five days to respond. There is no doubt that the Claimant did not timely respond, and that the Carrier issued its Notice of Hearing within 20 days from such failure. Thus, we reject the Organization's timeliness argument.

The evidence establishes that the directives to furnish medical information were clear, and that the Claimant never approached his Supervisor between September 1996 and May 1997 indicating that he did not understand what was being asked of him. He was obligated to keep the Carrier updated on his medical condition and to respond when specifically requested to do so. While the May, 1997 medical note does indicate two of the Claimant's conditions which prevented him from returning to work at the time, it did not clarify in any fashion the nature of his heart condition which was the original reason for his absence.

With respect to the Organization's contention that the penalty imposed was excessive, we note that on at least two prior occasions this Board and Public Law Board No. 5805 have held that the Claimant failed to follow his Supervisor's instructions and affirmed the penalties imposed based upon his extensive disciplinary record. Under the circumstances of this case, we find no reason to substitute our judgment for that of the Carrier.

Accordingly, the claim is denied.

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 17th day of April, 2000.