

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22794  
Docket Number MW-22857

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Port Terminal Railroad Association

STATEMENT OF CLAIM: "Claim of the System **Committee** of the Brotherhood that:

(1) The dismissal of Machine Operator Jesus R. Peres for alleged violation of 'General Rule **"B"**, and General Regulation 102' was arbitrary, unwarranted, an abuse of justice and discretion and on the basis of unproven charges.

(2) **Claimant** Jesus R. Peres shall be extended all remedies and benefits prescribed in Rule **11(E)**."

OPINION OF BOARD: **Claimant**, a machine operator, had several years of service with the Carrier although there is **some dis-**agreement as to his continuous service. **He** was allegedly injured on February 16, 1977, but did not seek medical attention until March 24, 1977.

On October 26, 1977, claimant's personal physician advised the Carrier that claimant was able to return to work. On November 10, 1977, Carrier instructed claimant to report within ten days to arrange for an examination by Carrier's doctor.

On November 21, 1977, an attorney representing the claimant, advised the Carrier that claimant was not satisfied **with** his previous doctor; had secured an appointment with another specialist; that claimant had not recovered, and was not then able to return to work. On **November** 22, 1977, claimant was again notified in part:

"This is in reference to a letter from your representing counsel of November 21 advising us of your decision to change physicians **following** Dr. **Puentes'** letter of October 28 advising us of your ability to return to work.

\* \* \* \*

"You are hereby instructed to report to this office to secure the necessary papers and make arrangements for a physical examination within ten (10) days."

On November 23, 1977, the attorney wrote the Carrier that he had advised claimant to be examined by a doctor selected by the Carrier. **Claimant** did not comply with Carrier's instructions of November 22, 1977, and on December 5, 1977, the Carrier notified him that he was dismissed from service for insubordination.

Investigation was requested in behalf of claimant and scheduled for December 30, 1977, and later postponed and held on March 2, 1978. A copy of the transcript of the investigation has been made a part of the record. Following the investigation, **claimant** was notified on March 21, 1978, that he would **remain** dismissed from service in accordance with the letter of December 5, 1977. On March 29, 1978, Carrier's Engineer of **Maintenance** of Way was notified by the representative of the Organization that claim would be filed in behalf of claimant and appealed "in accordance with handling under the Railway labor Act."

Based upon the record, we do not find Carrier's contention as to alleged violation of Article **11(c)** to be valid. The Board concludes that claimant was subject to discipline for not arranging to report for a physical examination by Carrier's designated physician. **However, permanent** dismissal was excessive. We will award that claimant **be** restored to service with seniority and other rights unimpaired but without compensation for time lost, subject to satisfactory return-to-work physical **examination** by Carrier's designated physician.

**FINDINGS:** The Third Division of the **Adjustment** Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of **the** Railway labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline imposed was excessive.

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Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT **BOARD**  
By Order of Third Division

**ATTEST:** *A.W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 31st **day of** March 1980.