

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24369**
Docket Number **MW-24427**

Edward M. Hogan, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way **Employees**
 { Atlanta and West Point Railroad Company

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

(1) **The** dismissal of **Trackman** M. L. Edwards for alleged 'Excessive tardiness in reporting for work; **Failure to carry** out instructions to bring **doctor's** certificate **when you returned** to work on September 8, 1980, as directed by your foreman; and Failure to **sign** receipt for Notice of Investigation on September 12, 1980, in violation of Safety Rule 17 (that portion dealing with insubordination)' was without **just** and sufficient cause and wholly disproportionate to the charges leveled against **him** (System File 37-AWP-80-130/12-39(80-52) AWP-39 G).

(2) **The** claimant shall be reinstated **with** seniority and all other rights **unimpaired** and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: **Claimant** was dismissed from **the** service of **the** Carrier on September 26, 1980 following a formal investigation on the charges **of violating** Rule 17 of the Agreement. **Claimant** had marked off because of **sickness** after **working** three (3) hours on September 5, 1980. He further told his **foreman** that he was going to see his doctor. **His section foreman** requested that he bring a doctor's certificate when he returned to duty. On September 8th, when the Claimant returned to duty, he did not have the requested doctor's certificate. **The Carrier's Roadmaster** notified the Claimant of **an** investigation to be held on September 18, 1980 on the above charges. While attempting to deliver the above notification, the **Claimant** refused to **acknowledge** receipt of **the notice from the Assistant Roadmaster**. On September 12, 1980, the **Claimant** was notified that the charges of "insubordination" were to be included **in** the f-1 investigation.

We concur **with** the position of **the** Carrier. The Claimant had been **in** the service of **the** Carrier for **approximately** sixteen (16) **months** prior to the events leading to the **formal** investigation. We find that the hearing was conducted **in** a fair and **impartial manner**, that there was no abuse of discretion, and that the hearing officer did **not** act in an arbitrary or capricious **manner** prejudicing any of Claimant's rights during the course of the hearing. We find ample precedent to uphold the actions of the Carrier.

"This is a discipline case involving dismissal of **Claimant** for refusing to **comply** with instructions.

The record **in** the case is **voluminous**. We have studied it carefully, and do not find that any of **Claimant's** substantive procedural rights **were** violated.

As to the merits of the case, the record is clear that **Claimant** deliberately refused to comply with reasonable instructions or orders of his supervisors. It is a generally recognized principle **in the** railroad industry that reasonable orders issued by supervisory officers must be complied with." (Third Division Award 16286, Referee Arthur W. Devine)

We find that the request to produce a doctor's certificate was a reasonable request by **the** section foreman and that **Claimant** was under a duty to comply with this request prior to his resumption of duty.

We further find that the Carrier's determination that the **Claimant** was guilty of **the** charge of insubordination was fully warranted insofar as Claimant refused to acknowledge receipt of the initial **charge** letter.

We **find no** reason to **overturn** the initial determination of the Carrier, and therefore, we deny the claim of the **Organization**.

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** Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **13th day** of **May 1983**.