NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26233

THIRD DIVISION Docket Number MW-26290

Charlotte Gold, Referee

PARTIES 'TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

(1) The thirty (30) days of suspension imposed upon I&R Foreman P. D. Klender for alleged 'Failure to . . . present yourself to the Conrail Medical Examiner's Office for an evaluation of your physical condition . . . as per instructions....' was arbitrary, capricious and without just and sufficient cause (System Docket CR-566-D).

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: By Certified letter dated July 25, 1983, Carrier notified Claimant, an I&R Foreman, to appear for an evaluation of his physical condition at the Conrail Medical Examiner's Office on August 4, 1983. Claimant did not keep the appointment and was thereupon instructed to attend an Investigation in Altcona, Pennsylvania, to look into his alleged failure to follow instructions. The Investigation was convened: Claimant was not present. The Investigation was recessed and it reconvened on September 22, 1983. Claimant did not attend that session either. He subsequently was found guilty of the charge and was issued a thirty calendar day suspension.

Carrier maintains that the charge was clearly sustained at the Investigation and that Claimant failed to provide *any* reason for his absence prior to the Organization's appeal and submission of this Claim to this Board. Given the nature of the infraction, Carrier believes that the discipline was warranted.

The Organization maintains that Carrier was aware of Claimant's condition and that there were mitigating factors that prevented Claimant from appearing for an examination. Claimant was not told that a failure to appear would result in discipline. The Organization does not believe that discipline is warranted in this instance.

The Board has reviewed the entire record of the case, including the Transcripts of the Investigation. That record reveals that Claimant *was* guilty as charged and that discipline was warranted. The Board agrees with Carrier that the Organization's contentions that Claimant was unable to make the 130-mile trip to Altoona for the examination, that he was advised by his Attorney not to appear, and that he was in too much pain to attend were all made wall after the fact and that Claimant failed to respond to Carrier's directive or to provide adequate reasons for his inability to do so in a timely fashion.

We find the notice of July 25, 1983, to be clear and unambiguous. Claimant disregarded it at his own peril.

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

That the parties waived oral hearing:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1987.