

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27004
Docket No. MW-27525
88-3-86-3-783

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Denver and Rio Grande Western Railroad Company

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

(1) The dismissal of Welder Helper M. L. Way for alleged insubordination on September 26, 1985 was without just and sufficient cause, arbitrary, capricious and on the basis of unproven charges (System File D-59-85/-MW-3-86).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered in accordance with Rule 28."

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

Claimant sustained off-duty injuries consisting of torn ligaments and possible damage to his hip as a result of a motorcycle accident. In late September, 1985, his personal physician released him for return to work. Carrier directed Claimant to report for a return to work physical on September 23, 1985. Claimant participated in part of the physical but did not complete it that date. He was instructed to return and complete the physical on September 26, 1985. He did not comply with these instructions.

Claimant was charged with insubordination for failure to comply with Carrier's instructions to complete his return to duty physical. Following an investigation, conducted in accordance with the Agreement, he was dismissed.

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On this record it is clearly established that Claimant was insubordinate when he failed to return to Carrier's physician to complete his return to duty physical. Accordingly, the discipline of dismissal will not be disturbed.

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 25th day of April 1988.