

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31551
Docket No. MW-32127
96-3-94-3-302**

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

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

- (1) The Agreement was violated when the Carrier imposed a sixty (60) day suspension on Mr. J.L. Sullivan for failure to follow instructions to report for a medical evaluation on December 11, 1992 (System Docket MW-2899D)**
- (2) As a consequence of the aforesaid violation, Mr. J. L. Sullivan shall receive the remedy prescribed by the parties in Rule 27, Section 4."**

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

The significant events leading to this dispute arose on December 8, 1992. By letter sent by Federal Express on that date, the Carrier instructed the Claimant to report for a return-to-work medical evaluation scheduled for December 11, 1992. However, the Carrier alleges that the Claimant did not report as directed and he did not call the Carrier on December 11 or earlier to explain why he would be absent. This charge was denied by the Claimant, who maintains that he did call the Carrier's Medical

Director's office on December 14 and explained to someone that, because of adverse weather on December 11, he did not know whether the doctor's office was open on the day of the scheduled examination. He added that this was the reason why he did not report.

The scheduled Hearing in this matter was twice postponed. It was subsequently held without the presence of the Claimant.

Numerous Awards have held that the Carrier is not required to continue to postpone an Investigation if it has a reasonable basis not to do so. In this case, the Claimant was clearly on notice and his decision not to appear at the Investigation was at his peril.

The evidence is clear and convincing that the Claimant failed to appear for his medical evaluation as instructed by the Carrier. Accordingly, there is no basis to disturb the discipline assessed by the Carrier.

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 Third Division

Dated at Chicago, Illinois, this 25th day of July 1996.