

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31918
Docket No. MW-32368
96-3-95-3-215

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE:(
(CSX Transportation, Inc. (former Baltimore
(and Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Equipment Operator M. A. Clabough for his alleged '...insubordination and failure to comply with instructions given by your Foreman.' on June 14, 1994 was arbitrary, capricious and exceedingly harsh [System File B-D-9828/12-(94-660) BOR].

(2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority and benefits unimpaired and he shall be compensated for all wage loss suffered."

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 were given due notice of hearing thereon.

On July 18, 1994, the Claimant was dismissed from the Carrier's service after being found guilty of failing to follow the instructions of his Foreman on June 14, 1994.

The Organization filed the instant claim on behalf of the Claimant contending that he suffers from a bi-polar disorder and takes prescription medication daily. It argues that the Carrier was fully aware of the Claimant's condition and his medication requirements. The Organization further argues that the Claimant was "experiencing difficulty with his medication which caused extreme mood swings." In addition, the Organization contends that on the date prior to June 14, 1994, the Claimant was sent back to his motel after he refused to obey his Foreman's instructions to go out during a lightning storm, and therefore, his "mood swing" on June 14 was a carry-over from the previous day's incidents.

This Board reviewed the evidence and testimony in this case and we find that the Carrier presented sufficient evidence that the Claimant was guilty of insubordination when he admittedly failed to follow the direct orders of his supervisors on at least three occasions. As a result of being found guilty of insubordination, the Claimant clearly placed himself in line for discipline.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

Normally, insubordination serves as a sufficient basis for discharge, even on the first occasion of insubordination. It is clear that a Carrier must have the right to assume that a direct order will be followed, even if the employee disagrees with that order. The basic principle of "obey now, grieve later" must be followed or the Carrier will not be able to operate in an efficient and profitable manner. That is why this Board has reviewed numerous insubordination cases resulting in discharge and has upheld them, even on the first offense.

However, in this case, we are faced with an employee who, although he was proven guilty of insubordination, has been serving the Carrier well for over 15 years and who suffers from a serious mental disease – bi-polar disorder. The Carrier is aware that the Claimant regularly takes medication for his problem. In this case, it is apparent from the testimony and the facts that the Claimant's disorder was, at least in part, responsible for his bizarre behavior resulting in his insubordination on the date in question. Consequently, although this Board recognizes that insubordination is a dischargeable offense, we believe that discharge was an unreasonable and arbitrary response to the Claimant's wrongdoing in this case when it is clear that his wrongdoing was, in part, the result of his mental condition.

This Board orders that the Claimant be reinstated as an employee with the Carrier, but without backpay. The time that he was off shall be considered a lengthy suspension. This Board also orders that the Claimant must be given a return-to-work physical by the Chief Medical Officer of the Carrier and that the Claimant should be continuously monitored throughout the future time he is employed with the Carrier to make sure that he is stable. The Claimant's own physician, as well as the Carrier's medical officer shall participate in monitoring the Claimant's mental condition to ensure that it does not have any more serious impact on his performance.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 4th day of March 1997.