

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32012
Docket No. MW-32374
97-3-95-3-224**

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 thirty (30) day suspension imposed upon Mr. D. P. Ediskey, Jr. for alleged insubordination in violation of CSXT Operating Rule 501, '*** was a result of your failure to notify your Roadmaster of a change in your medical status, as instructed by him.', was unwarranted, without just and sufficient cause and on the basis of unproven charges [System File B-D-9163/12(94-533) BOR].**
- (2) As a consequence of the above-stated violation, the Claimant shall be compensated for '*** the 30 days lost wages at trackman rate of pay, credited with days for vacation, months of April and May for retirement and all other benefits, account the aforementioned rule violation. . . ."**

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.

This claim arose when the Claimant received a 30 day suspension after being found guilty of being insubordinate, a violation of Operating Rule 501, when he allegedly failed to notify his Roadmaster of the change in his medical status.

On Thursday, March 10, 1994, the Claimant sustained a personal injury to his neck while installing rail anchors. After regaining his "composure", he completed his tour of duty that day. The Claimant's rest days were Friday, Saturday, and Sunday. On Monday, March 14, 1994, the Claimant reported for duty wearing a back brace and was observed by Track Foreman Ball who contacted the Roadmaster. The Roadmaster accompanied the Claimant to the Carrier nurse where the Claimant received first aid. The Claimant was then instructed to seek further medical attention if the pain persisted. Also, the Claimant was instructed by the Roadmaster to contact him immediately if the Claimant had to seek further medical attention.

On March 15, 1994, the Claimant decided that it was necessary to see his doctor and he allegedly attempted to contact the Roadmaster, but was unable to reach him. He then contacted Track Foreman Ball and informed him that he was going to see his doctor regarding the personal injury he had sustained while on duty.

Subsequently, the Claimant was disallowed his return to service and on April 4, 1994, he was charged with insubordination.

The Organization argues that the Carrier failed to prove its charges against the Claimant and did not afford him a fair and impartial Hearing. The Organization points out that the Claimant did contact Track Foreman Ball after failed attempts to contact the Roadmaster.

The Carrier contends that the charges were proven that the Claimant did not contact the Roadmaster after he had been instructed to do so. The Carrier argues that the Roadmaster had two telephone lines in his office and he gave his home number to the

Claimant. The Carrier contends that the charges were proven and the discipline was appropriate considering the seriousness of the wrongdoing.

The Board reviewed the procedural arguments raised by the Organization and we find them to be without merit.

With respect to the substantive issue, the Board reviewed the evidence and testimony and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of insubordination when he failed to notify his Roadmaster of the change in his medical status and also failed to notify him regarding his medical appointment and the name of his physician. The record is clear that the Claimant failed to contact the Roadmaster and did not even give the information to the Roadmaster once the Roadmaster had reached him through his wife.

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.

Insubordination has often been found to support a discharge on a first offense. In this case, the Claimant was issued a 30 day suspension. The Board recognizes that this Claimant had 18 years of satisfactory service and was suffering from an injury. However, he was given a clear instruction and he failed to abide by it. The Board cannot find that the 30 day suspension issued by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD

Claim denied.

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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 6th day of May 1997.