

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39616
Docket No. MW-40436
09-3-NRAB-00003-080257

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman Emilio Reyes for his alleged violation of NORAC Operating Rules D and T and alleged falsification of time records for Thursday, April 26, 2007 was without just and sufficient cause, arbitrary, capricious, and excessive discipline.**
- (2) Trackman Emilio Reyes shall now be reinstated to service with seniority and all other rights unimpaired and 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.

The Claimant was dismissed on May 18, 2007 for failing to follow instructions and falsification of his time claim for April 26. At the time of his dismissal, the Claimant had less than three years of service time with the Carrier. His work record contained a warning and a reprimand for absence, as well as a medical disqualification due to a positive drug test upon return from furlough.

Our review of the record does not reveal any procedural irregularities of significance. Turning to the merits, the record contains substantial evidence establishing that the Claimant was instructed to report to his normal headquarters point at 7:00 A.M. before departing to attend a NORAC rules class scheduled to begin at 8:00 A.M. He was further instructed to return to his work location after the class to complete his ten-hour work day. The rules class concluded at 2:00 P.M. The Claimant did not report at the start of the work day as instructed, nor did he return to the work site after class as he was instructed to do. Moreover, he did not call his supervisor to report any problems or reasons for his failure to return to work. Although the rules class was only six hours in duration, the Claimant reported that he worked eight hours when asked the following workday.

Given the foregoing factors, we must find that the Carrier's determination that the Claimant was guilty of the violations with which he was charged is supported by substantial evidence in the record. In light of the nature of his misconduct, when coupled with his prior disciplinary record, the Carrier's decision to terminate his employment is not unreasonable. The claim, therefore, must be denied.

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 1st day of April 2009.