

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20586  
Docket Number SG-20493

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood  
of Railroad Signalmen on the Long Island Rail  
Road Company:

Appeal from the discipline imposed on Mr. William Keller on  
August 28, 1972.

OPINION OF BOARD: Claimant was charged as follows:

"Failure to comply with instructions of  
Engineer-Communications, C. F. Dailey, to go  
to Company doctor when requesting to report  
off work sick Friday morning, July 7, 1972."

Subsequent to an investigation, Carrier determined that  
Claimant was guilty and disciplined him with a five (5) working days  
suspension.

Claimant brings a number of matters to the Board's attention,  
including a question of whether Carrier may properly exclude a Claimant's  
Attorney from participating at the hearing, and whether a Carrier may  
require an employee to report to Carrier's medical department when he  
claims to be ill.

In addition, Claimant urges that the record fails to support  
a conclusion, as a factual matter, that he failed to comply with an  
instruction. The Board feels that Claimant's contention, in this regard,  
is well taken. Accordingly, it is unnecessary to consider the matters  
mentioned above.

Claimant testified that he was sick, and was told to see  
Mr. Dailey. After Claimant explained the situation, Dailey told Claimant  
to visit the Company doctor. Claimant replied that he had a right to  
go to his own doctor. He then stated that Dailey replied "... if I  
went to my own doctor, which I did, he said I would have to bring back  
a note, which I did."

Dailey stated that he did not excuse Claimant from going to the  
Company doctor. However, he also testified:

"He said he would not go to the Company doctor.  
I said that when he came back to work he had  
better have a note from his own doctor."  
(Underscoring supplied.)

McAuliffe, the Office Engineer-Communications, heard portions of the discussion between Claimant and Dailey. When asked if Dailey had stated that when Claimant went to his own physician he would have to bring back a note, McAuliffe replied, "Yes".

The record confirms that Claimant did present to the Carrier a note from his personal physician.

Numerous Awards of this Board have repeated the rule that we may not substitute our judgment for that of Carrier, and that we should not attempt to resolve questions of credibility. While we do not quarrel with those Awards, we also note, as recently stated in Award 20034:

" ... our function in discipline cases is to pass upon the question of whether there is substantial evidence to sustain the imposition of discipline."

Claimant states that he was advised to produce a note from his personal doctor, when he expressed a desire not to visit the Company doctor. He understood that warning as relieving him from any obligation to comply with the original instruction. We find no evidence to suggest that he was again ordered to visit the Company doctor after the dialogue about a note. The Board finds that the testimony of Carrier's witnesses confirmed Claimant's understanding, and we feel that the entire record fails to present substantive evidence to support a conclusion that Claimant failed to comply with an instruction.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1975.