

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21950
Docket Number CL-21899

Herbert L. Marx, Jr., Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation
((Former Penn Central Transportation Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8251, that:

(a) The Carrier violated the Rules Agreement, effective July 1, 1965, when on February 11, 1975 Mr. G. N. Dixon was tried in absentia on the charge of 'failure to follow instructions concerning medical examination as outlined in letter from your Supervisor R. E. Drudy, dated January 27, 1975, Certified Mail No. 100936', even though Mr. Dixon had not received notice that trial was to be held.

(b) Carrier failed to prove charges against Mr. Dixon and thus further violated the agreement by dismissing him from service on February 18, 1975.

(c) Carrier shall now be required to restore Mr. G. N. Dixon to service, remove this unjust discipline from his record and pay him for all time lost as a result of this wrongful action.

OPINION OF BOARD: On January 8, 1975, Claimant was an employe, with some nine years' service as a Block Operator, holding a regular assignment headquartered at Richmond, Indiana. He had been absent from duty on a number of occasions, including three days (December 20, 21, and 28, 1974) because of sickness. Claimant's work record prompted the Supervisor Operating Rules to have Claimant contact the company medical officer before returning to duty. The Supervisor, on January 7, 1975, arranged for an appointment at 2:30 p.m. on January 8. The appointment was not kept.

Subsequently, the Supervisor related to Claimant the details of attempts to contact him and advised him to arrange to report to the company medical officer on January 13, 1975. Claimant reported for said appointment but, not having the proper form, the physical examination was not performed.

Under date of January 27, 1975, the Supervisor explained to Claimant that it was his responsibility to obtain the proper form and to report to the medical officer within five days of the receipt of the letter, or face removal from service. Claimant did not comply with the instructions. Consequently, notice of his suspension from service, charges, and time, date and place of trial were duly sent by certified mail. The record supports the conclusion that Claimant evaded delivery of such notice. He was tried in absentia, found guilty of failure to follow instructions, and was dismissed from service.

On appeal it was asserted that Claimant "did not have his day in court" in that the Carrier, in its first instructions relative to taking a physical examination, was merely preparing a basis for disciplinary action. Be that as it may, Claimant should have complied with the instructions which, on their face, do not appear unreasonable.

The record shows that Claimant was twice instructed to undergo a physical examination and was given the benefit of the doubt as to whether he received notice of the first Carrier-arranged appointment; he received notice to report for examination on January 13 but reported without the required form. He was then provided the proper medical form with a certified letter instructing him to again report within a given time, which he did not do.

The record clearly shows a half-hearted compliance with instructions or a deliberate reluctance to fully follow instructions. For these actions, Claimant deserved to be disciplined. He should have complied with instructions and grieved later if, in fact, he felt aggrieved.

Guided by the fact that discipline should be applied so as to turn an employe toward a proper course of conduct and with the expectation that a rather severe suspension might cause this Claimant to be a more responsible employe, the Board, in view of all the circumstances, holds the discipline of dismissal should be modified in this case and that Claimant should be reinstated to service with all rights unimpaired but without pay for time lost. Claimant's record should show that his dismissal was converted to a suspension and Claimant should clearly understand that he should not expect favorable consideration in any subsequent similar occurrence.

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 discipline imposed is modified as stated in Opinion.

A W A R D

Claims (a) and (c) denied. Claim (b) sustained as modified in Opinion, i.e., Claimant to be returned to service without pay for time lost and his record to show suspension during the period withheld from service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.