

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Hogan, Referee

Award Number 24369
Docket Number MW-24427

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
 { Atlanta and West Point Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackman M. L. Edwards for alleged 'Excessive tardiness in reporting for work; Failure to carry out instructions to bring doctor's certificate when you returned to work on September 8, 1980, as directed by your foreman; and Failure to sign receipt for Notice of Investigation on September 12, 1980, in violation of Safety Rule 17 (that portion dealing with insubordination)' was without just and sufficient cause and wholly disproportionate to the charges leveled against him (System File 37-AWP-80-130/12-39(80-52) AWP-39 G).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier on September 26, 1980 following a formal investigation on the charges of violating Rule 17 of the Agreement. Claimant had marked off because of sickness after working three (3) hours on September 5, 1980. He further told his foreman that he was going to see his doctor. His section foreman requested that he bring a doctor's certificate when he returned to duty. On September 8th, when the Claimant returned to duty, he did not have the requested doctor's certificate. The Carrier's Roadmaster notified the Claimant of an investigation to be held on September 18, 1980 on the above charges. While attempting to deliver the above notification, the Claimant refused to acknowledge receipt of the notice from the Assistant Roadmaster. On September 12, 1980, the Claimant was notified that the charges of "insubordination" were to be included in the formal investigation.

We concur with the position of the Carrier. The Claimant had been in the service of the Carrier for approximately sixteen (16) months prior to the events leading to the formal investigation. We find that the hearing was conducted in a fair and impartial manner, that there was no abuse of discretion, and that the hearing officer did not act in an arbitrary or capricious manner prejudicing any of Claimant's rights during the course of the hearing. We find ample precedent to uphold the actions of the Carrier.

"This is a discipline case involving dismissal of Claimant for refusing to comply with instructions.

The record in the case is voluminous. We have studied it carefully, and do not find that any of Claimant's substantive procedural rights were violated.

As to the merits of the case, the record is clear that Claimant deliberately refused to comply with reasonable instructions or orders of his supervisors. It is a generally recognized principle in the railroad industry that reasonable orders issued by supervisory officers must be complied with." (Third Division Award 16286, Referee Arthur W. Devine)

We find that the request to produce a doctor's certificate was a reasonable request by the section foreman and that Claimant was under a duty to comply with this request prior to his resumption of duty.

We further find that the Carrier's determination that the Claimant was guilty of the charge of insubordination was fully warranted insofar as Claimant refused to acknowledge receipt of the initial charge letter.

We find no reason to overturn the initial determination of the Carrier, and therefore, we deny the claim of the Organization.

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 Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.