

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25195
Docket Number CL-25311

James Robert Cox, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees
(Maine Central Railroad Company/Portland Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9796) that:

1. Carrier acted in an arbitrary, capricious, unjust, uncalled for, discriminatory manner when, without just cause, it dismissed Clerk Robert A. Hatch from service of the Carrier on November 24, 1982.

2. Carrier shall now be required to reinstate Clerk Robert A. Hatch to service of the Carrier forthwith, clear his record of any and all charges and compensate him for all time lost and reinstate his seniority and other rights pertaining thereto as a result of his uncalled for dismissal from service.

OPINION OF BOARD: October 27, 1982, Robert Hatch, a clerk at Waterville, Maine was terminated for insubordination in violation of General Regulation 703 and for being absent from work without proper authority in violation of General Regulation 707. Regulation 703 recites that employees who, among other things, are "insubordinate" will be subject to dismissal from the service while Regulation 707 mandates that employees report for duty at "the designated time and place...they must not absent themselves from duty, exchange duties with others in their place without proper authority."

Claimant Hatch suffered an on-the-job injury August 12, 1981.

The Carrier sent Claimant a December 31, 1981 letter informing him that, before he could return to work, arrangements would be made by the Storekeeper for him to be examined by a Carrier physician at Portland, Maine. Hatch was also told verbally that when he brought in a doctor's slip, he would have to see the Carrier physician in Portland before reinstatement. In April, 1982, Hatch wrote the Company asking to be returned to work "in a clerical and/or light duty nature as my family doctor has so recommended."

Following the Carrier's receipt of this April letter, the Assistant Manager/Personnel of the Carrier wrote Claimant, referring to the April 30th letter on May 5th:

"Prior to our scheduling an examination with the Company physician, please forward report from your family physician to me, detailing your current physical status and limitations, if any, in order that our Company physician may review this material for an examination."

Although the Carrier had received an inquiry from Mr. Hatch's attorney asking whether light duty work was available, there was no response to the request for a medical evaluation.

In August, 1982, the Carrier received a release from a Dr. Marshall finding that he could return to work August 30, 1982--together with a cover letter from Mr. Hatch. Hatch indicated that, "Unless I hear differently I shall return to work August 30, 1982." Dr. Marshall was one of several examining physicians that examined for the Carrier at Waterville, Maine. There is no evidence, however, that the Carrier sent Hatch to Marshall for a return to work examination. The Carrier then contacted Dr. Marshall who informed them that he was not aware that Hatch had been out of work for approximately one year.

August 20th the Carrier had again written Hatch, this time responding to his request to return to work and again informing him that:

"...it is Company policy that a return to work examination will be conducted by a Company physician here in Portland who has the benefit of medical reports provided by the employee and his physician..."

The Carrier asked Hatch for a medical report detailing his current physical status in order that a Carrier physician could review the findings before his examination.

Hatch conceded that he received the Carrier's May 5th and the August 20th letters. The Board notes that the May 5th letter, while referring to the Carrier scheduling of an examination with a Carrier physician, did require as prerequisite the forwarding of a report from Claimant's physician before Carrier's examination would be scheduled.

The Carrier next wrote to Hatch September 10, 1982, this time referring to the release from Dr. Marshall, reiterating that what had been said in the previous letters and concluding with a request that:

"I now must ask you to provide the medical information I requested so that an examination may be scheduled. Please provide this information by September 30, 1982. Failure to comply with this request will result in discipline."

Hatch acknowledged receipt of this letter.

There was no response from Hatch to the letter of September 10th, although, after the September 30, 1982 deadline, his Attorney asked for a statement from the Carrier that no light duty or clerical work was available for Hatch in order to establish Claimant's rights to Disability Insurance. The Attorney also asserted that medical records of a Dr. Lenz on Hatch had been forwarded to the Carrier in May, 1982. There was no evidence to show that any medical records had ever been submitted by Dr. Lenz. In the Carrier's file there was only a 1982 letter from Dr. Lenz replying to Mr. Hatch's request of April 30, 1982, indicating that the doctor could not then comment on Claimant's present condition or his ability to return to work since Hatch was no longer under his care although, as of April 26, 1982, it was his opinion that Hatch was capable of returning to clerical/light duty.

The Carrier is headquartered in Portland, Maine where its Chief and Assistant Chief Medical Officers are on staff. Employees returning after being out of work for a long period of time are examined in Portland. The evidence shows that it has been the Carrier's practice to provide their physicians with background information on employees before their examination including a history of treatment during the term of their absence.

The evidence indicates that Hatch did not respond to Carrier requests of May 5th, August 20th or September 10th, did not produce any evidence for his failure to so reply or arrange for transmittal of medical records on his current physical status which had been requested as a prelude to the return to work examination by the Carrier physician.

Hatch wrote a September 10th letter asking for a reply to an earlier letter from his attorney with respect to the lack of availability of work. His interest was in qualifying for a disability benefit.

Hatch said he did not respond to the Carrier letter because he felt that the information requested could be prejudicial to a lawsuit he was pursuing.

The thrust of Claimant's failure to follow Carrier's directions does not relate to his refusal to appear for a Carrier physical but his failure to furnish the Carrier physician with records of medical treatment during the term of his disability. Hatch, who had been requested to furnish this information on three occasions over a four-month period, refused and failed to respond or give any reason why he was not furnishing the information.

Based upon the evidence of continued non-response without reason the Board finds that the Carrier had just cause for the dismissal of Robert A. Hatch.

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

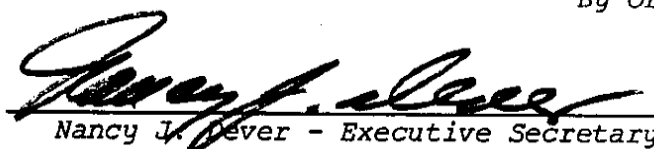
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 11th day of January 1985.