

The Third Division consisted of the regular members and in addition Referee W. F. Euker when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(New Orleans Public Belt Railroad

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

(1) The dismissal of Painter T. Catalanotto for alleged '... failure to follow instructions of Mr. F. E. Heath ... to return to his office on Wednesday, October 29, 1986, with Company Physicians Medical Report and failure to contact anyone in authority thereafter concerning your return to work examination and reinstatement' was without just and sufficient cause, arbitrary and on the basis of unproven charges.

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be 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 employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

This is a discipline case involving the dismissal of an employee who was assigned as a Painter on the Huey Long Bridge, New Orleans, Louisiana. The gravamen of this dispute has its roots in Third Division Award 26127, and its Order which allegedly reinstated Claimant to service "on or before November 1, 1986."

Briefly summarizing, the Claimant was advised by certified letter from Carrier on October 1, 1986, that he was to be reinstated on or before November 1, 1986, consequently he should make immediate arrangements for a return-to-work physical examination to accommodate this time frame. The letter was returned as the Post Office was unable to effect delivery. On October 21, 1986, Carrier called Claimant and advised him of the instructions contained in the letter and supplemented these instructions with a follow-up letter on the same date. The Claimant finally appeared for his physical on October 29, 1986, and was allegedly advised to return to Carrier's office with the results upon completion of the examination. Although Claimant's testimony does not categorically repudiate the receipt of these instructions, he contends that while at the doctor's office he was told the results of his exam would be forwarded to Carrier and he would hear from them. The net result was that Claimant did not return to the Carrier's office on October 29, 1986, and he was not returned to service by November 1, 1986, in alleged compliance with the Board's Award and Order. As a result of the foregoing, the Claimant was advised in letter dated November 6, 1986, that he was dismissed from Carrier's service. The claim was thoroughly handled on the property but was not successfully concluded and is now presented for our review and consideration.

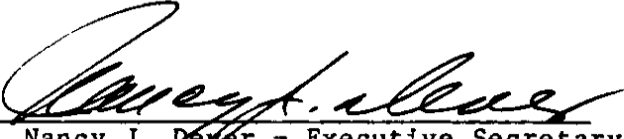
The record of this case demonstrates a shocking indifference by Claimant toward his responsibilities in following written instructions from the Carrier officers who were making their best effort to comply with the Third Division Order. While the Order is perhaps ambivalent on the Claimant's return date to service, nonetheless the Carrier reasonably construed it to require adherence by November 1, 1986. It is apparent the Carrier treated the Board's Order with considerably more deference and respect than that manifested by Claimant. However, we do not feel the penalty exacted fits the crime. It is our decision the Claimant should be returned to service without compensation and with the admonition that he strictly follow the Carrier's instructions reinstating him to service, subject to Carrier's physical examination requirements.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1989.