

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44791  
Docket No. SG-46406  
22-3-NRAB-00003-210156**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Northeast Illinois Regional Commuter Railroad Corp.  
(METRA)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Railroad Corp. (METRA): Claim on behalf J. DeHoyos, for reinstatement to service with compensation for all time lost, including overtime, with all rights and benefits unimpaired and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53, when it issued the harsh and excessive discipline of dismissal against the Claimant, without providing a fair and impartial Investigation held on September 11, 2019. Carrier’s File No. 11-2020-2. General Chairman’s File No. BRS#04-D-19. BRS File Case No. 16396-NIRC. NMB Code No. 106.”**

**FINDINGS:**

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

**Factual Background:**

At the time of the dispute, the Claimant was working as a Signalman CDL Driver on Carrier's Milwaukee District. On August 17, 2019, the Claimant was approved to take a medication which caused symptoms that led to him surrendering his CDL. The Claimant subsequently went on vacation, and made arrangements to see Metra's doctor on Thursday, August 29, 2019. After seeing Metra's doctor, he was placed on a temporary medical hold. Nicole Lang, Manager, Medical Services, was under the advisement that the Claimant's position required a CDL, meaning the Claimant would need to undergo a DOT physical examination before returning to work.

The Claimant was given a fitness for duty form on Friday, August 30, 2019 which concluded that his only restriction was to obtain a valid CDL if his job requires a CDL license.

The Claimant maintains his position as signalman with CDL did not require a CDL, and he came to work on Tuesday, September 3, 2019. He was told to leave but did not depart the premises until after the police arrived. The Carrier deemed this to be an intentional and willful act of insubordination, and terminated his employment. The Union grieved this disciplinary action as unjust and unsupportable in violation of the parties' collective bargaining agreement. On Wednesday, September 4, 2019, Manager Lang provided the Claimant with medical clearance to return to work.

**Position of Organization:**

On August 29, 2019, the Claimant received a medical clearance to work, but it had restrictions. The Organization argues this created too much confusion for the Claimant's actions to be deemed insubordination. It characterizes the situation as miscommunication. It explains that the Claimant thought he had the right to bump into a non-CDL position, and came to work on September 3, 2019 to protect his seniority. It contends he thought he was medically cleared.

The Organization also alleges a procedural violation in that the Carrier lacked witnesses who were present during the alleged insubordination incident.

The Organization contends the Claimant was fit for duty and showed up on September 3, 2019, in anticipation of a physical examination. It refutes the Carrier's assertion that the Claimant had to be escorted off property, claiming his demeanor was not confrontational as portrayed by Carrier. The Claimant denies receiving instructions not to report to work. The Organization claims that if the Claimant had received communication from his supervisors not to show up, he would not have come in. In the Organization's assessment, this was a case of confusion on both sides rather than

insubordination, because the Claimant was not told that if he did not leave, he would be disciplined.

**Position of Carrier:**

The Claimant was informed on multiple occasions that he was not to return to work:

- On Thursday, August 29, 2019 by Nicole Lang, Manager, Medical Services;
- On Friday, August 30, 2019 by Concentra, the Chief Medical Officer, who required supplemental documentation to support his return to work;
- On Saturday, August 31, 2019 by John Meyer, Director, Milwaukee District, after the Claimant sought to argue his status;
- On Sunday, September 1, 2019 by John Meyer, Director Milwaukee District.

As the Carrier sees it, there was no time when the Claimant received instructions from a supervisor that he could return to work. It maintains the Claimant was repeatedly told to leave when he arrived at work on September 3, while his supervisor was on the phone, and again after the supervisor hung up. The Claimant's written communications demonstrate he knew he was instructed not to return on Tuesday. The Carrier alleges the Claimant tried to argue on two separate occasions, demonstrating that he understood his instructions but had no interest in following them. His last email was sent at 9:08 PM, a mere nine hours before he intended to return to work.

The Carrier views insubordination as an egregious offence which compromises its essential ability to manage its work force. As such, it denies any assertion that the discipline was too severe.

**Analysis:**

The Organization's point is well taken, that the restrictions on the medical clearance dated August 29, 2019, may have created confusion by saying he was cleared while having restrictions that could prevent such clearance. However, any confusion should have been cleared up when the Claimant was instructed not to return to work until his medical release was cleared up:

**Q. Is any of those correspondence with John, Mr. Meyer, after the Exhibit F, did any of those contradict this statement that says you are not to return to work?**

A. Yes, he says I was not to return to work until I talked to Medical or cleared it up with Medical. I do have it, Im not – (TR 109)

Despite this advisory, the Claimant testified that he came to work to go to Medical and get cleared for work. Certainly, confusion about coming to work was a reasonable explanation for the Claimant's arrival on September 3, 2019. However, the situation evolved after the Claimant arrived. He was repeatedly told to leave, to the point that the police were called. It certainly would be nonsensical for the Carrier to call the police without first telling an employee to leave. The Claimant testified that Frank yelled at him that he was insubordinate for showing up, "And then after I was asked to leave I tried e-mailing Medical, Labor Relations, to get a clarification." (TR 135) This testimony confirms that the Claimant was asked to leave, but did not do so, and was confrontational instead. It is undisputed that the Claimant was still there when the police arrived. He made no representation of compliance - because there was none.

Carrier's representation that the Claimant was insubordinate is strongly validated by the need to call the police, and by the fact that the Claimant was still present when the police arrived. If there had been confusion when he arrived at work that day, it became crystal clear that the Claimant was subsequently pointedly advised to leave, yet he did not. As the Carrier points out, this was a volitional act which defied the Carrier's essential right to direct its working forces.

The Carrier has established that the Claimant was insubordinate. This is a very serious offense that goes to the basis of the employment relationship. As a result, the Carrier has met its burden of proof in this case.

### AWARD

Claim denied.

### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 19<sup>th</sup> day of September 2022.