

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 111

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Laborer M. A. Arreola for his alleged:
 - a) failure to comply with instructions to provide medical information to the Medical Department as instructed to you by Superintendent D. K. Elder on September 27, 1996, and by certified letter P 203 82 9702 of October 11, 1996. (Employee's Exhibit B-6.)

was without just and sufficient cause, in violation of the Agreement, and based on unproven charges. (Carrier File MW-FTW-96-62.)

2. As a result of the violation referred to in Part (1) above, Claimant M. A. Arreola shall now be reinstated to service with all seniority, vacation, and all other rights unimpaired, and he shall be paid for all monies loss suffered by him beginning August 8, 1996, and continuing until he is reinstated to service.

FINDINGS:

Claimant M. A. Arreola was employed by the Carrier as a laborer at the time of the claim.

On December 11, 1996, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with the charge that he failed to timely comply with the instructions of the Carrier to provide medical information to the Carrier's medical department as instructed to him by Superintendent D. K. Elder on September 27, 1996, and by certified letter P 203 829 702 of October 11, 1996, in regards to an August 7, 1996, incident the Claimant was involved in.

After many postponements, the investigation was held on May 9, 1997, without the Claimant's presence. On May 20, 1997, the Carrier notified the Claimant that he had been found guilty of the charges and was being assessed discipline of dismissal from all service with the Carrier.

The Organization filed a claim on behalf of the Claimant challenging the discipline. The Organization contends that the Carrier violated Rules 22-(A) and (E) of the parties' working agreement dated February 1, 1951, and that the Carrier's demand that the Claimant provide it with medical information was inappropriate, unnecessary, and served only to harass and intimidate an injured employee. Finally, the Organization contends that the Carrier failed to conduct a fair and impartial hearing, failed to adequately meet its burden of proof, failed to take into account all of the surrounding circumstances of the incident, and that the discipline assessed was unjust, excessive, and an abuse of the Carrier's discretion.

The Carrier denied the claim based on the evidence in the record, contending that sufficient evidence was adduced at the investigation substantiating the Claimant's guilt, warranting his dismissal, and that the Carrier had the right to require the Claimant to provide a medical evaluation on his ability to participate in an upcoming investigation and to determine his fitness to perform the duties of his position in a safe and responsible manner but that the Claimant failed to obey the Carrier's instructions.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to comply with verbal and written instructions of the Carrier. Employees are obligated to obey

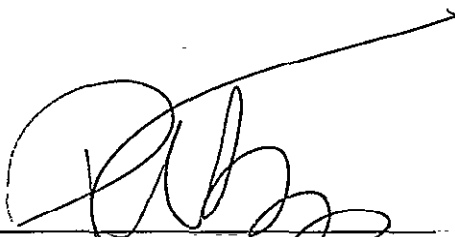
reasonable instructions. In this case, the Claimant was given reasonable instructions to furnish his medical records. The Claimant did not comply.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

Given the seriousness of the wrongdoing in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: 3-10-00



CARRIER MEMBER

DATED: 3-2-00