

PUBLIC LAW BOARD NO. 3530

Award No. 1
Case No. 1

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Former employee, John S. Adams, P.O. Box 363, Keysville, VA 23974, was dismissed from service for allegedly failing to report within (10) days from notification. Employees request Mr. Adams be reinstated with pay for lost time, vacation and seniority rights unimpaired.

FINDINGS:

Claimant was injured on September 15, 1981 and was held out of service. On January 13, 1982, Claimant was given a physical examination in order to determine whether he was qualified to return to work. By letter dated January 15, 1982, Claimant was notified of his fitness for service and advised to report to his assigned position. Claimant failed to respond to this notice and did not report to work as assigned. By letter dated February 4, 1982, Claimant was notified that he was being dismissed from service for failure to report for work within ten days of being qualified. The letter further advised Claimant that he was being removed from all seniority rosters.

The Organization filed a claim protesting Carrier's action and requesting that Claimant's dismissal letter be removed from his file and his name returned

to the seniority roster. The Claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Public Law Board for resolution.

The issue to be decided in this dispute is whether Claimant was wrongly dismissed for failure to report for work as assigned, and if so, what should the remedy be.

The Organization argues that Claimant was improperly dismissed because, though the Carrier physician approved Claimant for service as of January 15, 1982, Claimant's personal physician did not certify him as fit for work at that time. However, the record shows that while Claimant received notice of his fitness for service by registered mail on January 15, 1982, he did not contact Carrier until after receiving the notice of dismissal. If Claimant entertained doubts about his physical fitness for service, he had ample time, between January 15 and February 4, 1982, to contact Carrier officials. Because he failed to do so, Carrier could only conclude that Claimant did not wish to continue in Carrier's employ.

Even if it is assumed that the Organization's allegations are correct, it has not been stated how, under all the circumstances, Carrier's handling of the matter may have violated the Agreement. The result is that this Board does not have sufficient grounds to render an award in Claimant's favor.

It is the opinion of this Board that Claimant was on notice of his duty to either report for service or contact Carrier officials, and that he took neither action. Carrier therefore did not act improperly in dismissing Claimant from service, and the claim must be denied.

AWARD:

Claim denied.

Nicholas Rumer
Neutral Member

J. A. Whitlock Jr.
Carrier Member

Briggs L. Kelly
Organization Member

Date: 4/33/84

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