

PUBLIC LAW BOARD NO. 3666

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and

Indiana Harbor Belt Railroad Company

STATEMENT Claim of Elisha McGrew for reinstatement with
OF CLAIM: full seniority unimpaired and for lost earnings

FINDINGS: By reason of the Agreement entered into by and between the parties on June 13, 1984, and upon all of the evidence in the record, the Board finds that the parties hereto are respectively the employe and the carrier as defined in the Railway Labor Act, as amended, and that it has jurisdiction in this proceeding.

In a letter dated August 17, 1983, Carrier notified the Claimant to attend an investigation to determine the facts and his responsibility, if any, for his insubordination in not following instructions and reporting for a physical examination. An investigation was conducted on August 30, 1983. Claimant did not appear. His representative did appear. In a letter dated September 6, 1983, Claimant was advised that he was dismissed from service.

The record shows that on May 23, 1979, the Claimant reported an on the job personal injury. Thereafter, Claimant worked intermittently until October 10, 1979. Since the latter date, Claimant has not worked, contending that he is incapacitated because of the injury.

On January 12, 1983, Carrier wrote to the Claimant instructing him to report to the Southeastern Industrial Medical Center for a physical examination within five (5) days. A U. S. Postal Receipt bearing Claimant's signature shows that he received this letter on January 24, 1983. He did not report to the medical clinic as instructed, and he called no one.

Another such letter was sent to the Claimant on February 22, 1983. A U. S. Postal Receipt shows that he received this letter on March 3, 1983. He did not report to the Southeastern Industrial Medical Center as instructed, nor did he telephone anyone.


Carrier again wrote to the Claimant on May 26, 1983 calling his attention to the fact that he failed to arrange for a physical examination as instructed in the second notice dated March 3, 1983 and advised him that his failure to follow such instructions will be handled as insubordination. There was no response.


On July 19, 1983, Dr. Kishan Chand, Carrier's Medical Director, wrote to the Claimant instructing him to call his office within the next five days to schedule "a Personal Injury Evaluation". Having received no reply, the Administrative Manager to Dr. Chand telephoned and spoke to the Claimant. In a letter to the Carrier dated August 10, 1983, this Administrative Manager reported the telephone call and said, "In personally speaking to Mr. McGrew he stated that he had no intention of scheduling any appointment with Dr. Chand, supposedly upon the advice of his Attorney".

Carrier is entitled to have its medical director examine and evaluate Claimant's alleged injury to determine whether or not he is able to perform his prescribed duties. Although absent for a considerable time, he was still an employee of the Carrier and as such subject to reasonable instructions. It is not unreasonable to request his submission to a physical examination and evaluation. By refusing to follow directives, Claimant was guilty of insubordination. The Board, therefore, finds that he was dismissed from service for just cause and that there is no merit to his claim.

AWARD

Claim denied.


DAVID DOLNICK, Chairman and Neutral Member


J. K. BEATTY, Carrier Member


WILLIAM E. LA RUE, Employee Member

DATED: Jan. 2, 1985