

**PUBLIC LAW BOARD NO. 5418**

Case No. 42

Award No. 42

**PARTIES**

to

Brotherhood of Maintenance of Way Employees

- and -

**DISPUTE:**

Springfield Terminal Railway Company

**STATEMENT OF CLAIM:**

Appeal of the discipline of dismissal assessed Robert Butynski, effective June 27, 2000.

**FINDINGS:** The Board finds that the record contains no procedural irregularities, and we found no due process defects that would preclude the Board from considering the merits of the case.

The issues herein came about as a result of the claimant being charged with his failure to report for a return to work physical on May 2, 2000 and, his failure to make himself available at a subsequent agreed upon time to be notified of a rescheduled physical examination.

The record shows the claimant became an automatic bidder for a position in his seniority district. In the awarding process, claimant was informed and understood, that he was to report for a return to work physical scheduled for May 2, 2000. Subsequently, claimant's supervisor learned that the claimant had called the facility where he was to take his physical and cancelled his appointment. The supervisor testified that he confirmed this fact in conversation with the claimant on May 8, 2000. The supervisor stated he told the claimant that he would schedule another physical and requested a telephone number and time when he could contact the claimant. The supervisor testified that he scheduled another physical for May 10, 2000, and called the claimant at the agreed upon time, however the claimant was not available. The supervisor stated he made 7 more attempts that evening to contact the claimant and several more the following morning (May 9<sup>th</sup>) to no avail. He stated he eventually gave the information to the claimant's roommate regarding the scheduled physical and told him to have the claimant contact him. The supervisor stated the claimant failed to contact him and he again made four attempts to contact the claimant without success. The record shows the claimant failed to take the required physical examination.

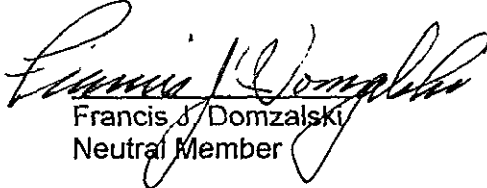
AWD NO. 42

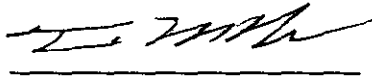
PLB No. 5418 C-42/A-42

Page 2

In this case, the Board finds that the claimant's action clearly shows he failed to comply with clear and simple instructions. Therefore, based on the established facts of this case, and in light of the claimant's past disciplinary record, we find the Carrier did not misuse its discretion when it assessed discipline.

AWARD: The claim is denied.

  
Francis J. Domzalski  
Neutral Member

  
T. W. McNulty  
Carrier Member

  
B. A. Winter  
Organization Member

Dated: 2-12-2001