

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Louisville and Nashville Railroad Company

STATEMENT
OF
CLAIM:

The dismissal of Track Repairman T. E. Miller was without just and sufficient cause, arbitrary and capricious; he shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

At the time claimant arrived for work on the morning of February 10, 1981, a light rain was falling in the area. He informed Foreman England that he would not work in the rain.

When Mr. England told claimant that he could not let him off since there was a derailment in the area, claimant said he did not care what they had, he was not going to work in the rain. The record indicates that it did rain fairly hard on February 10, but that the rest of claimant's gang and another gang worked that day to clear the derailment.

According to claimant he felt ill that morning and had informed Foreman England that he had a cold. Mr. England

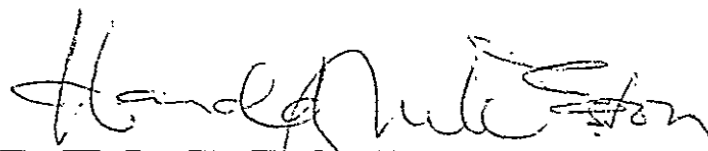
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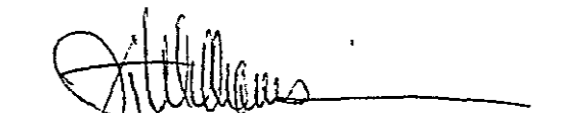
testified that claimant's appearance did not indicate that he was ill and that claimant did not inform him that he was sick. Other witnesses corroborated Mr. England's testimony in that regard. Claimant testified, however, that he had been ill for several days prior to February 10, although he had worked on February 9 and reported for duty on February 10.

On the basis of this record, we cannot validly hold that discipline is unwarranted. It is, however, our conclusion that such extreme disciplinary action as dismissal is not appropriate under the circumstances of this case. We are not persuaded that claimant intended to be insubordinate.

AWARD: Claimant to be reinstated with seniority rights unimpaired but without back pay. To be effective within 30 days.

Adopted at Jacksonville, Florida, April 21, 1983.


Harold M. Weston, Chairman


Carrier Member


Employee Member