

Award No. 51  
Case No. 107

Public Law Board No. 2363

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Seaboard System Railroad (L & N RR)

STATEMENT  
OF  
CLAIM:

Trackman Alphonse Williams shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

On February 15, 1983, claimant sustained an on-duty back injury when he tripped over a broom. He was treated by Company doctors and on February 28, 1983, was approved by Dr. Crotwell to return to work on a restricted basis. He declined to do so.

During the next five or six weeks, members of management made repeated efforts to discuss the situation with claimant in an effort to determine his physical condition and have him return to duty. He did not request a leave of absence. Instead the record indicates he avoided meeting or communicating with Carrier representatives although repeated efforts were made by management to reach him.

Finally, by letter dated April 8, 1983 from

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Superintendent Mosley, claimant was instructed

"to be in my office at 9:00 a.m.  
April 15, 1983. If for any reason  
you cannot make this appointment  
contact my office before this date."

Claimant did not report on April 15 as directed.

He called the Division Engineer's office at 7:46 that morning, however, and notified that office that he could not attend the meeting; when he was asked to stay on the telephone to speak with Mr. Mosley, he replied that he could not do so because of the pain.

After a hearing had been held on charges of insubordination for failing to comply with the instructions contained in the letter of April 8th, claimant was dismissed from Carrier's service.

We are satisfied from this record that claimant acted to the detriment of Carrier's legitimate interests by a pattern of evasion and is guilty of serious misconduct. It would have been, of course, only common courtesy for claimant to have replied to Carrier's many calls, particularly when the excuse given by his wife was at times that he was asleep. Quite apart from the matter of courtesy, however, stands the fact that he owed an affirmative duty to his employer to cooperate and discuss his condition and availability for service.

It is significant that no medical evidence has been offered to show that claimant was suffering such pain that he could not respond to telephone calls or house visits, attend a meeting or indeed return to work on a restricted basis. An employee interested in his job and his company could reasonably have been

expected to be in touch with his supervisors; particularly would that be true if, as here, he had been pronounced physically fit to resume work on a restricted basis.

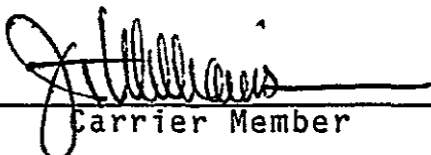
The fact that claimant's General Chairman could not attend the meeting on April 15 does not excuse his failures to communicate with Carrier. There is no proof to support claimant's assertion that he was harassed by Carrier's management or that he could not attend the meeting because of medical reasons. The Division Superintendent had made it clear that the meeting's purpose was to discuss not discipline but claimant's progress toward recovery and availability.

While dismissal is extreme disciplinary action that causes us concern, we find no persuasive ground for substituting our judgment for that of Carrier in this case. After all, it is Carrier alone that must shoulder its difficult manpower problems. The record indicates that claimant had previously been suspended without pay for insubordination (see our Award No. 26); it was proper for Carrier to take that fact into consideration in assessing discipline.

AWARD: Claim denied.

Adopted at Jacksonville, Florida, *November 6,* 1984.

  
Harold M. Weston, Chairman

  
Carrier Member

  
Employee Member