

STATEMENT OF CLAIM: Claim of Trackman Dave Duran that the suspension assessed him by the Carrier September 4, 1979 through September 17, 1979, was capricious and without due process. Claim that he be compensated for all wage loss including any benefits lost resulting from his suspension.

Claimant was a trackman and on Claim Date, he alleged that his back had been injured and was taken by Carrier to a Dr. Goad in Golden, Colorado, for treatment. Dr. Goad provided Claimant with medication and advised Claimant to return for treatment if his condition did not improve. On the date of the injury, Road Master Kaparos contacted Dr. Goad and made a supervisory report based upon his conversation with Dr. Goad that the estimated time to be lost by Claimant would be three (3) days. Claimant returned to Carrier on June 25, 1979, whereupon he requested an advancement in pay and received the same from the Claims Representative of Carrier. On July 12, 1979, Claimant contacted Dr. Zalman, who in the absence of Dr. Goad who was on vacation, released claimant for return to work. Claimant presented the release to his Foreman, who advised Claimant that it would be necessary that he (Claimant) see the Road Master. During this procedure, the release was misplaced and Claimant was forced to return to the doctor's office to secure another copy of the release. He was permitted to return to work on July 16, 1979. Upon his return to work, he was immediately notified of the investigation which was ultimately conducted on August 2, 1979. As a result of the investigation, Claimant was censored and suspended from service of Carrier from September 4 to September 17, 1979, inclusive, for violation of Rule 665 for being absent from his assignment without proper authority from July 4 to July 13, 1979; for failure to report to Dr. Goad as directed; and for failure to furnish a location at which he could be reached by the Company during his absence. The Record in this case discloses that Claimant's personal record contains other entries where Claimant had previously been censored for violation of Rule 665 for his failure to protect his job assignment and upon Claimant's return to service on September 18, 1979, he was discharged from service of Carrier for other violations of Rule 665. All of this can be considered by this Board in determining whether or not the punishment was arbitrary and capricious.

Rule 666 requires employees subject to call must not absent themselves from their usual calling place without notice

to those required to call them. The record in this cause reflects that from June 4 through June 12 attempts by Carrier to contact this Claimant were futile even though they called his last known address on many occasions during this period of time.

This Board finds that the suspension assessed Claimant in this case was not capricious and was with due process. This finding is made in view of the fact that a three (3) day estimate of time that Claimant should have been off because of the injury was made by the doctor who saw Claimant immediately after the injury; in view of the fact that Claimant did not contact the proper authorities for forty-five (45) days after the injury; and further, in view of the fact that Carrier representatives were unable to contact Claimant at his last known address during the involved interval. Also, it appears to this Board that this Claimant has continually, both before and after the violation considered in this dispute, been in violation of Rule 665.


For the above reasons, this Claim will be denied.

AWARD: Claim denied.


Signed at Denver, Colorado, this 10th day of March, 1981.



GENE T. RITTER, Chairman



D. M. TISDALE,
Carrier Member



S. E. FLEMING,
Employee Member