

PUBLIC LAW BOARD - NO. 3514

Case No. 120 Award No. 117

PARTIES Consolidated Rail Brotherhood of Maintenance
to Corporation and of Way Employees
DISPUTE:

STATEMENT OF CLAIM:

Appeal of Trackman Willie D. McDaniel, to have discipline of dismissal set aside and to be restored to the service.

FINDINGS: In this dispute, the Claimant failed to comply with a return to work notice, dated October 4, 1984, after the Carrier's Medical Specialist had determined that there were no medical grounds prohibiting the Claimant from performing his regular duties.


While the Claimant relies principally on a contention that he was experiencing a great deal of pain and that his personal physician recommended that he not return to work at the time, we do not find substantive support in the record to support this contention.

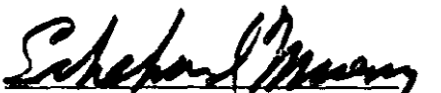
The Carrier's right and responsibility to determine whether an employee's physical condition meets its medical standards is well established. However, while the Claimant erred in his responsibility, there are certain mitigating factors, as set forth in the total record, when considered in light of the Claimant's many years of service. These circumstances prompt us also to conclude that he should be provided another opportunity to become a


valuable employee. Accordingly, he will be restored to the service with seniority and other rights unimpaired, but without back pay.

AWARD

As specified in the Findings.


F. J. Domzalski
Carrier Member


Eckehard Muessig
Neutral Member


J. P. Cassese
Employee Member

Dated: DEC 4 1966