

SPECIAL BOARD OF ADJUSTMENT
PUBLIC LAW BOARD NO. 3729

CONSOLIDATED RAIL CORPORATION
"CARRIER"

-and-

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES
"ORGANIZATION"

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CASE NO. 12

AWARD NO. 11

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-1191-D) that:

1. The Carrier violated Rule 27(b) of the current Scheduled Agreement when placing Claimant Wayne Edison, Trackman, out of service subsequent to his hearing on September 25, 1984, and assessed the Claimant 30 days suspension without just and sufficient cause.
2. The Claimant shall be compensated for all lost wages including overtime and his personal record shall be expunged of any record on this discipline.

This case arose when the Carrier charged Wayne Edison, hereinafter the Claimant, with insubordination. The specific charge, contained in a notice dated August 10, 1984, was as follows:

Insubordination on July 30, 1984 and August 2, 1984 when you failed to report to the Conrail Medical Department at 30th St. Station, Philadelphia, Pa. as ordered by V. L. Terziu, Division Superintendent via certified mail dated July 13, 1984 and July 25, 1984.

The hearing was held on September 25, 1984. The Claimant was present and represented by the Organization. By notice dated

October 5, 1984, the Carrier notified the Claimant that he had been found guilty of the charge and assessed discipline of 30 days suspension. The above quoted claim was then filed on behalf of the Claimant.

The Claimant was a trackman with six years service at the time of the hearing. As a result of an injury the Claimant missed work. The Carrier believed the Claimant had recovered sufficiently to resume his normal duties and therefore notified him to report for medical evaluation on July 20, 1984. The Claimant did not report. The Carrier then sent the Claimant a second notice ordering him to report for a physical examination on August 2, 1984. The Claimant called the Carrier on August 2 and said he was not feeling well enough to appear. The Carrier subsequently charged the Claimant as previously quoted.

POSITION OF THE PARTIES:

It is the Organization's position that the Claimant was not insubordinate. Rather, he had medical problems on the days of both scheduled appointments that legitimately prevented him from attending. On both occasions he called the Carrier in advance to say he could not attend. In addition, the Carrier improperly placed the Claimant out of service for a major offense.

The Carrier asserts that the record contains substantial, credible evidence of the Claimant's guilt. On two occasions the Claimant failed to appear as directed for a physical. The Carrier maintains that it has no record that the Claimant contacted the Carrier on July 20 and the call on August 2 should have been made

earlier. Furthermore, the Claimant did keep appointments with his personal physician on both July 20 and August 2, thereby demonstrating that he could have also reported for the Carrier physicals.

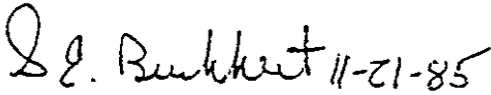
OPINION OF THE BOARD:

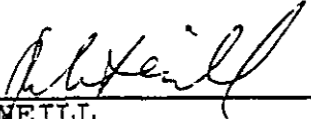
The Board has determined that the claim must be denied, as the record supports a finding that the Claimant was insubordinate. On two occasions he failed to report as ordered for a medical examination in spite of his ability to attend physicals with his own doctor. The Claimant also did not make timely requests to reschedule the examinations.

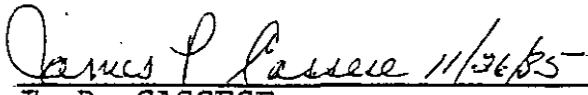
The Board has further concluded that the Carrier did not act arbitrarily by removing the Claimant from service for a major offense. Accordingly, the claim shall be denied.

AWARD:

Claim denied.


SCOTT E. BUCHHEIT
Neutral Member

 12/2/85
ROBERT O'NEILL
Carrier Member

 11/26/85
J. P. CASSESE
Organization Member