

Special Board of Adjustment No. 956

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
New Jersey Transit Rail Operations, Inc.

STATEMENT  
OF  
CLAIM:

Appeal from 15 days suspension administered to  
B&B Mechanic A. Fernandez.

FINDINGS:

On Wednesday, June 11, 1986, claimant sustained an on-duty injury while exiting the North Waiting Room door at Hoboken Terminal. His left hand required five stitches at St. Mary's Hospital and he was instructed to report to the company doctor on June 13.

The company doctor examined claimant on June 13, a Friday, and instructed him to return immediately to light duty "with no use of left hand." The grievant is right-handed. Claimant then went to another doctor, Dr. Herman, and on the same day, June 13, he signed a note certifying that claimant is under his care for the hand injury and should not return to work until June 17. Dr. Herman subsequently, on June 17, issued another letter

recommending that claimant should return to work on June 18.


On Monday, June 16, Manager Hartnett ordered claimant, over the telephone, to return immediately to work. Claimant refused and was informed that he was out of service. In Carrier's view, claimant was insubordinate when he refused to report for work on June 16.

Claimant's injury was limited to his left hand and the record establishes no valid reason for not at least reporting on June 16 as instructed. If he found when he arrived for light duty that it would aggravate his injury for him to perform the work, he might then have declined to do so. There is no indication that Dr. Herman was aware of the work that claimant was assigned to handle on June 16. At any rate, claimant was not at liberty to ignore instructions and should have at least presented himself at the work site on June 16.

In this situation, a fifteen day suspension appears to be excessive discipline. The suspension will be reduced to five days which more reasonably reflects claimant's rule infractions and in the light of this specific situation.

AWARD: Suspension reduced to five days. Claimant to be compensated accordingly for time lost. To be effective within 3 days.

Adopted at Newark, N.J., *October 19*, 1987.

  
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Harold M. Weston, Chairman

*JS BAKER*  
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Carrier Member

*H. E. LaRue*  
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Employee Member