

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NOS. 136
CASE NO. 136

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim sustained in accordance with the Findings of the Board.

DATE: May 21, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier improperly terminated the seniority of Mr. A. Pittmon by a letter dated October 28, 1996 for alleged failure to report to service (System Docket MW-4681).
2. The Agreement was violated when the Carrier removed the name of Mr. A. Pittmon from the Cleveland District Seniority Rosters and thereafter failed to correct same (System Docket MW-4842).
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimant shall be reinstated to service with seniority and all other rights unimpaired, his name shall be restored to its proper place on all Cleveland District Seniority Rosters from which it was improperly removed and he shall be compensated for any wage loss suffered as a result of the Carrier's actions."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

On October 10, 1995, while he was performing his assignments, the Claimant sustained a fall on his head whereby he suffered two spinal injuries, a pulled groin tendon, a sprained left knee and left ankle, and a sprained right wrist. Thereafter, he was placed on medical leave.

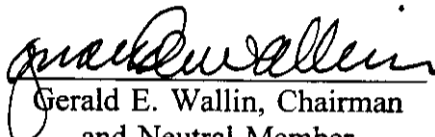
By letter dated September 17, 1996, the Carrier instructed the Claimant to report for duty at Cleveland, Ohio. The letter also instructed him to arrange for a Return From Furlough Physical Exam. Although the Claimant alleged he never received the letters, Carrier presented evidence to show that said letters were sent Certified Mail, Return Receipt Requested to the Claimant's last known address. The Claimant alleged that he did not accept the letters as they were addressed to A. Pittman rather than A. Pittmon. The Carrier pointed out, without refutation, that the Claimant had cashed checks made out to A. Pittman since 1973 and did not seem to be prejudiced by that.

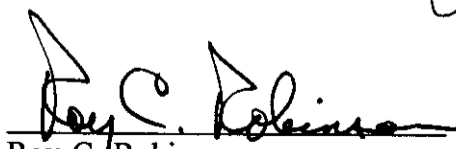
Whether the Claimant believed that he should not be required to submit to a return to work physical or return to service until his personal physician released him for duty is a matter he should have discussed with the Carrier when he became aware of the Carrier's attempt to contact him. To stand mute then claim ignorance of the situation at hand is simply not a proper course of action for Claimant to have pursued. Third Division Awards 31534, 31954 and 32569 are not on point in this case. In those cases, the claimants pointed out to the carriers that they had not yet been released by their personal physicians and, therefore, were not eligible to return to service. As we pointed out above, the Claimant did not respond to the notices sent to him by the Carrier, therefore that argument was not raised on the property.

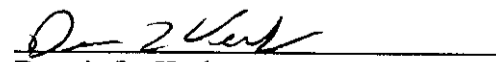
Due to the unique mitigating and extenuating circumstances present in this record, the Board finds that Claimant shall be offered reinstatement to his former employment, subject to passing Carrier's return to work requirements, with seniority and other rights of employment unimpaired but without back pay.

AWARD:

Claim sustained in accordance with the Findings of the Board.


Gerald E. Wallin, Chairman
and Neutral Member


Roy C. Robinson,
Organization Member


Dennis L. Kerby,
Carrier Member