

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

Case No. 21

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: CSX Transportation, Inc.

STATEMENT OF CLAIM:

Sixty (60) day suspension assessed to W. B. Sapp,
ID #155890, as a result of investigation held
February 8, 1991, at Tampa, Florida.

FINDINGS:

Claimant W. B. Sapp was employed by the Carrier as a machine operator.

On November 12, 1990, the Carrier notified the Claimant to submit proof of his disability, per Rule 17 of the Agreement, as a result of his being absent from service since February 8, 1989. On January 15, 1991, the Carrier charged the Claimant with insubordination for failing to provide proof of his disability and good cause for his absence from service. The Carrier asserts that the Claimant received the November 12, 1990, letter because he signed the certified mail return receipt on November 16, 1990. The hearing took place on February 8, 1991. On February 28, 1991, the Carrier notified the Claimant that he had been found guilty of all charges and was assessed discipline of sixty (60) days' suspension. Thereafter, the Organization filed a claim on Claimant's behalf, challenging his suspension.

This Board has reviewed the evidence and testimony in this case, and we find that there is insufficient evidence that the

Claimant was guilty of insubordination.

The record reveals that the Claimant was sent a letter on November 12, 1990, instructing him to furnish proof of his disability to Mr. M. L. Dobbs, Division Engineer. The record also reveals that the Claimant admits receiving that letter.

However, there seems to be some confusion on the part of the Claimant as to who was to receive the proof of his disability. The record reveals that he did obtain medical reports and provided them to the Railroad Retirement Board in Jacksonville, Florida, and he was not clear in his mind that he was supposed to send the proof to Mr. M. L. Dobbs.

The record is clear that the materials were to be sent to Mr. Dobbs, and Claimant certainly made a mistake in not providing Mr. Dobbs with copies of his disability documents. Once he was charged with the offense of insubordination, the Claimant made every effort to obtain reports from doctors and submit them to Mr. Dobbs.


Although the Claimant did not properly follow the instructions set forth in Mr. Dobbs' letter dated November 12, 1990, the question before this Board is whether or not the action of the Claimant amounted to insubordination. Given the facts in their entirety, this Board cannot find that the Claimant was acting insubordinately when he failed to provide the medical documentation to Mr. Dobbs after he received the letter of November 12, 1990. Insubordination is a serious offense involving an employee's refusal to perform work after receiving a

direct order from a supervisor. Insubordination has been more broadly interpreted as including the disregarding of instructions from the Carrier. However, in this case, there is definitely some confusion as to what the Claimant should do while he is off on disability with respect to the obtaining of medical disability documentation and providing it to the Carrier. Therefore, this Board finds that it was unreasonable for the Claimant to be found guilty of insubordination for his admitted errors.

Since there is no basis for finding the Claimant guilty of insubordination, the claim must be sustained.

AWARD:

Claim sustained.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Date: _____

8/9/91