

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CANADIAN PACIFIC RAILWAY COMPANY

Case No. 46

STATEMENT OF CLAIM:

Appeal of Claimant David A. Simpson

FINDINGS:

At the time this dispute arose, the Claimant, David A. Simpson, was on medical leave. Prior to his leave, he was employed by the Carrier as a machine operator at the Nahant Yard.

On May 1, 1997, the Claimant received notice from the Carrier instructing him to appear for a formal investigation into the charges that the Claimant allegedly failed to comply with outlined instructions from Medical Services and allegedly failed to make himself available for service by absenting himself from duty without authority. On June 24, 1997, the Carrier notified the Claimant that he had been found guilty of failing to provide medical information as instructed and failing to comply with outlined instructions in violation of General Code of Operating Rules 1.6, 1.2.7 and 1.13. As a result, the Claimant was terminated effective that date.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that

the Carrier has presented sufficient evidence that the Claimant failed to supply the required medical documentation to support his absence during the early part of 1997. The record reveals that the Claimant was sent letters on January 27, 1997, February 13, 1997, and April 30, 1997, and the Claimant never returned any medical documentation in response to those requests. Finally, on May 9, 1997, the Carrier received the information that it was seeking from the Claimant's attorney. The Carrier representative admitted that the delay may have been caused by the fact that the Claimant's doctor had had some surgery himself. Moreover, the Carrier witnesses had no knowledge as to whether or not the Claimant had ever been examined by the chief medical officer or any doctor employed by the Carrier.

The record also reveals that the addresses on the envelopes allegedly directed to the Claimant for delivery of the various letters were incorrect. In some cases they had the wrong number, in other cases the wrong zip code, and even the wrong city.

At the hearing, the Claimant admitted that he was approved to go back to work in January of 1996 but failed to do so because he was having "severe problems" with part of his body. The Claimant admitted that the Carrier could not accommodate his restrictions at work. However, the Claimant also admitted, as charged, that he failed to cooperate with the Carrier on several occasions because he did not want to "compromise" his legal position. At the hearing, the Claimant also stated that he still has medical restrictions on the kind of work that he can perform.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

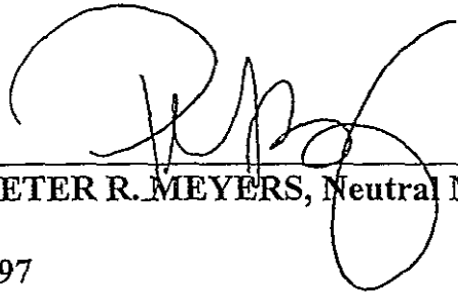
Although the Carrier has proven that the Claimant failed to promptly come forward with the medical records that were requested, there were several errors made by the Carrier which also delayed the process. From the record, it appears to this Arbitrator that the Claimant and his attorney failed to properly deal with the problems caused by the Claimant's own doctors. However, the Carrier's errors hindered the Claimant's ability to timely respond to the Carrier's requests. Consequently, this Arbitrator must find that the Carrier did not have just cause to terminate the employment of the Claimant.

This Claimant is still suffering from medical problems. He admittedly is not in a position to return to work. However, I find that the Carrier was unreasonable, arbitrary, and capricious when it terminated him for failing to provide medical documentation to the Carrier. The documentation is in the file. The Claimant seems more than willing to provide the updated information, and therefore, the Claimant is not in violation of the Rules. The discharge must be rescinded.

AWARD

Claim sustained in part. The Claimant shall be reinstated as an employee of the Carrier. However, since there is nothing in the record that shows that the Claimant is

medically able to return to work, he shall remain on medical leave until such time that he can demonstrate to the Carrier that he is medically fit to return to work. He must continue to respond to the Carrier's request for medical information. Consequently, there will be no award of backpay.



PETER R. MEYERS, Neutral Member

Dated: December 16, 1997