

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32935
Docket No. MW-34067
98-3-97-3-601

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Vehicle Operator R. M. Widup for alleged insubordination in connection with his alleged failure to follow the instructions of Division Engineer J. R. Stump issued in a letter dated February 16, 1996 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System Docket MW-4304-D).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall receive the benefits of the remedy prescribed by the parties in Section 4 of Rule 27."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On March 6, 1996, Claimant was directed to attend an Investigation on March 21, 1996, concerning his alleged insubordination in that he allegedly failed to comply with a directive of the Division Engineer to furnish certain medical information. The Hearing was held as scheduled. Claimant did not appear at the Hearing and the Hearing proceeded in absentia. On April 2, 1996, Claimant was notified that he had been found guilty of the charge and had been dismissed from service.

The Organization contends that Claimant was not afforded a fair Hearing, but instead was a victim of a conspiracy designed to force him from Carrier's employ. The Organization further argues that Carrier failed to prove the charge by substantial evidence, in that it was admitted at the Hearing that Claimant had responded to the Division Engineer's directive, having advised the Division Engineer of the name of his treating doctor and that there had been no change in his diagnosis.

Carrier maintains that Claimant was given a fair Hearing. Carrier contends that Claimant was notified properly of the Hearing and that neither Claimant nor the Organization requested a postponement. Consequently, in Carrier's view, it acted properly by proceeding in absentia. Carrier further contends that it proved the charge by substantial evidence and that dismissal was justified.

Essentially, this claim presents two issues: whether Carrier violated the Agreement by proceeding with the Hearing in absentia and whether Carrier proved the charge by substantial evidence? We find that Carrier acted properly in proceeding in absentia.

The record is clear that Carrier properly notified Claimant of the Hearing. Evidence was presented at the Hearing that there had been no request for postponement. During the appeal to the Senior Director - Labor Relations, the Organization advanced a belated contention that Claimant had requested a postponement. However, there is no documentation or other evidence in support of this argument - only Claimant's assertion. Furthermore, no reason for the alleged postponement request or for Claimant's failure to appear at the Hearing was presented. On the basis of the record presented, we find that Carrier proceeded properly in holding the Hearing in absentia.

Turning to the merits, we find that Carrier proved the charge by substantial evidence. The record developed at the Investigation revealed that Claimant had been off work due to an on-duty injury that he sustained on May 3, 1995. Claimant had failed to provide any medical information following his February 5, 1996, doctor's appointment. Consequently, the Division Engineer sent Claimant a letter directing him to provide the name and telephone number of his treating physician, his diagnosis, his treatment plan, his estimated return to work date, and his medication. Claimant responded indicating the date of his next doctor's appointment and further indicating, "Diagnosis - Still the same. I will be happy to provide you with an update after my next appointment."

It is clear that Claimant failed to provide most of the information required of him. He failed to provide any information as to his treatment plan, expected return to work date and medication. Such information was important because the record reveals that there were issues concerning Claimant's refusal to accept a light duty assignment or a Transitional Work Assignment. Thus, it is clear that Carrier proved Claimant's insubordination by substantial evidence. Accordingly, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.