

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 24860

Docket No. 44490

97-1-95-1-A-1975

The First Division consisted of the regular members and in addition Referee Katherine Gerstenberger when award was rendered.

PARTIES TO DISPUTE: (G. A. Willis  
(Burlington Northern Santa Fe Railway Company  
( former Atchison, Topeka and Santa Fe  
( Railway Company)

**STATEMENT OF CLAIM:**

“Claim of Engineer G. A. Willis for reinstatement to service with full back pay for all time lost as of January 2, 1991, with seniority and all other rights restored and unimpaired as a result of the investigation held June 13, 1994, at the Assistant Superintendent's Office of the Atchison, Topeka and Santa Fe Railway.”

**FINDINGS:**

The First 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.

Claimant was employed by the Carrier as a locomotive engineer from April 7, 1979, until his dismissal on June 27, 1994. On November 4, 1990, Claimant was placed on a medical leave of absence after he was institutionalized. On January 2, 1991,



Claimant presented the Carrier with a doctor's release, and requested to return to service. Carrier informed Claimant that under its policies, he could not return to active service until he had completed medical release forms 2820 and 2805. Claimant did not submit these forms and, consequently, was continued on medical leave of absence for approximately three years.

In October 1993, J. L. Hogan, General Chairman of the Brotherhood of Locomotive Engineers, wrote Carrier requesting information regarding Claimant's employment status. In response, Carrier sent Claimant copies of forms 2820 and 2805 on January 7, 1994, and advised him that the timely completion of these forms was necessary before his request to return to service could be considered. The Carrier further informed Claimant that his failure to comply with this procedure would subject him to possible disciplinary action for noncompliance with Carrier Rules. Claimant was instructed to return the completed forms within thirty (30) calendar days from the date of the letter.

In a letter dated January 31, 1994, Claimant stated that he had completed forms 2820 and 2805, and that they were enclosed in his January 31 letter in a sealed envelope to preserve confidentiality. The sealed envelope had been addressed and stamped for mailing to Dr. R. K. Khuri, the Carrier's Medical Director, in Chicago, Illinois. Carrier mailed the sealed letter, but, since Dr. Khuri's office had moved to a new location, the letter did not arrive.

On March 15, 1994, after Dr. Khuri's office informed Carrier that it had not received Claimant's letter, Carrier sent Claimant another set of forms 2820 and 2805. Carrier also enclosed an envelope addressed to Dr. Khuri's new address, and advised Claimant that he must return the forms to Dr. Khuri no later than March 28, 1994. On March 30, 1994, Claimant requested until May 1, 1994, to file the completed forms. When the forms had not been received by Dr. Khuri's office by May 5, Carrier wrote Claimant advising him that he was being given a final notice to submit the properly executed forms no later than May 15, 1994, and that his failure to do so would result in the scheduling of a formal Investigation for possible violation of Carrier Rules.

On May 26, 1994, after Claimant failed to submit the completed medical release forms, he was served with Notice of Investigation. The Investigative Hearing was held on June 13, 1994. The purpose of the Investigation, as stated in the May 26 Notice, was to:



“...develop all facts and place [Claimant's] responsibility, if any, in connection with possible violation of Rules 1.2.7 and 1.13 of the General Code of Operating Rules effective April 10, 1994, General Rules A, B, C, 1004 and 1018 of the Safety and General Rules effective June 30, 1993, and Superintendent's Notice S-50 effective April 10, 1994, concerning [Claimant's] alleged failure to comply with instructions in providing medical information to Dr. Khuri, Santa Fe Medical Director, as instructed per [Carrier's] letter of May 5, 1994 and allegedly being absent without leave beginning May 16, 1994.”

Claimant was represented at the hearing by BLE General Chairman J. L. Hogan. At the hearing, Claimant refused to answer any questions regarding his failure to provide Carrier with completed copies of forms 2820 and 2805, stating “no comment” throughout his examination. He stated at the close of the hearing that since the Carrier had caused delays in his reinstatement, he was withdrawing his offer to return to work without back pay, and was requesting that he be returned to work with full pay and benefits.

As a result of the investigation, Claimant was dismissed from employment on June 27, 1994. Claimant's dismissal was appealed by the Organization on August 2, 1994, and its appeal was denied by Carrier on August 17, 1994.

Claimant has raised numerous jurisdictional and procedural arguments, including challenges to the jurisdiction of this Board under the Railway Labor Act, the timeliness of the investigation and post dismissal conference, the fairness of the investigation, including the credibility of the evidence and Carrier's failure to call certain witnesses, Carrier's failure to process Claimant's appeal in a timely fashion, and various alleged procedural errors in the formal record and Carrier's submission. The Board has carefully considered each of Claimant's jurisdictional and procedural contentions, and finds them to be without merit. We further find that the claim is properly before us.

With regard to the merits of the claim, Claimant argues that he did not request a medical leave of absence, but, rather, was improperly placed on medical leave by the Carrier. Claimant further submits that when he produced two doctors' releases stating that he was fully capable of performing his duties, the need for him to file forms 2805 and 2820 was eliminated. Moreover, Claimant maintains that Carrier acted in an

arbitrary and capricious manner when it held Claimant out of service pending a hearing and then dismissed Claimant.

The Carrier argues that it had just cause to dismiss Claimant. Carrier emphasizes that it has had a longstanding practice of requiring employees to submit medical release forms 2820 and 2805 prior to returning to active service from a medical leave of absence. Moreover, Carrier rules require employees to comply with instructions from supervisors, and prohibit employees from withholding information regarding unusual events or personal injuries. Claimant's refusal to comply with Carrier's instructions to submit forms 2820 and 2802 violated these rules. Finally, Carrier asserts that Claimant's disciplinary record supports the discharge penalty. In this regard, Carrier notes that Claimant previously had been discharged on three separate occasions during his seventeen years of employment with the Carrier.

Upon full consideration of the entire record and the arguments raised by the parties, the Board finds that there is substantial evidence to support the Carrier's decision to discharge Claimant. The evidence establishes that Carrier issued Claimant clear instructions to execute and submit medical release forms 2802 and 2820, and gave him extensions of time in which to comply with these instructions. It was not unreasonable for Carrier to require Claimant to submit the forms in view of his lengthy absence from work due to medical reasons. Moreover, the requirement that he submit the forms conformed to Carrier's longstanding practice. Claimant refused to return the completed forms, however, even after repeated requests from the Carrier to do so. Claimant's uncooperative attitude was further demonstrated by his refusal to testify at the Investigative Hearing.

We find no basis in the record upon which to relieve Claimant of his obligation to file the medical release forms required by the Carrier. We further find that the discipline assessed Claimant was not arbitrary, capricious or excessive in light of his disciplinary history and his persistent refusal to provide the medical information requested by the Carrier.

#### AWARD

Claim denied.

























Form 1  
Page 5

Award No. 24860  
Docket No. 44490  
97-1-95-1-A-1975

**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 First Division

Dated at Chicago, Illinois, this 5th day of November 1997.