

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21538  
Docket Number **CL-21457**

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: ( Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station **Employes**  
( Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
**GL-7990**, that:

1. Carrier violated the Agreement between the parties when it failed to substantially prove Mr. C. **Boyer** guilty of insubordination, and in abuse of discretion dismissed Claimant based on said charges and subsequently changed the dismissal to a **10-day** suspension. .

2. Carrier shall compensate Mr. **Boyer** for all wages and other losses for each day he was held out of service with **6%** interest for all back pay.

OPINION OF BOARD: Following an investigation held on December **19, 1974**, Claimant was found responsible for being insubordinate account he refused to comply with instructions of **Yardmaster Hansen** and Assistant **Trainmaster Hetherington** while working the **2300 PMC Checker assignment** on December 6, **1974**. Claimant was dismissed from service as a result of his insubordination but the dismissal was subsequently reduced to a ten-day suspension.

The facts adduced at the investigation evidence that on the morning of December 6, 1974, Claimant was ordered to make a complete check of the PON Train Yard. However, due to the hazardous condition of the Yard following a major snow storm that had occurred on December 1, **1974**, Claimant advised his supervisors that it was physically impossible to make a complete check of the Yard because of drifting snow. Yet Hansen and Hetherington insisted that he check the Yard which he refused to do. It is undisputed that nearly 20 inches of snow had fallen on the City of Pontiac on December 1, **1974**, **completely** paralyzing the City.

A thorough reading of the record before us compels this **Board** to conclude that Claimant's decision not to check the **PON** Train Yard on December 6, 1974 was based on a well-founded and sincere fear for his physical well-being. In the light of the circumstances existing **in** the Yard on December 6, 1974, we hold that Carrier exceeded acceptable limits

in assessing Claimant with any discipline. Accordingly, we shall sustain the claim save for that segment thereof requesting interest on any back pay award to Claimant.

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

That the parties waived oral hearing;

**That** the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes** within the meaning of the Railway Labor Act, as approved June **21, 1934;**

That this Division of the Adjustment **Board** has jurisdiction over the dispute involved herein; and

**That** the Agreement was violated.

**A W A R D**

Claim sustained except as to interest on the back pay awarded Claimant.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauler*  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.

