

PUBLIC LAW BOARD NO. 4623

Case No. 42
Award No. 42

PARTIES TO DISPUTE: UNITED TRANSPORTATION UNION

-and-

SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM:

Appeal from the dismissal of Carman Charles Philbrick for his alleged violation of Carrier Rules GR-C and GR-N. Claim is that he be returned to service with his seniority unimpaired and that he be paid for all lost time and benefits from June 5, 1990 until restored to service.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

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

That this Board has jurisdiction over the dispute involved herein.

In August, 1990, the Claimant had not performed any service for the Carrier for over five (5) months due, in part, to sickness. The Claimant informed the Carrier that his doctor had released him to return to work and the Carrier arranged for him to be examined by its physician. On August 2, 1990, the Manager of Car Maintenance at Waterville, Maine, advised the Claimant that an appointment was made for him to be examined by Dr. Egilman, the Carrier's Chief Medical Officer, on August 23, 1990. Dr. Egilman's office is located in North Billerica, Mass., approximately 180 miles from the Claimant's residence in Maine. The Claimant responded that "[I] will be willing to present myself at the prescribed place and time only if transportation is provided by the company to [Dr. Egilman's office] for me as has been for other employees in the past." The Carrier did not provide the transportation requested and the Claimant did not keep his August 23, 1990 appointment with Dr. Egilman.

Due to the Claimant's failure to appear for a physical examination with the Company doctor on August 23, 1990, he was required to attend an investigation on September 6, 1990. At his investigation, the Claimant insisted that he was not insubordinate as charged by the Carrier. He explained that he was ready and willing at all times to be examined by Dr. Egilman provided that the Carrier furnish him with transportation to North Billerica as it did for other employees. Following his investigation, the Claimant was dismissed from service, effective September 17, 1990, for his purported insubordination and for allegedly failing to report for duty at the prescribed place and time.

The facts evidence that on February 20, 1990, the Claimant marked off sick and was out of service for approximately five (5) months when he sought to resume his employment in August, 1990. Due to the Claimant's protracted absence, the Carrier had the right to require him to be examined by a Company physician to assure that he was fit to return to service. The Carrier also had the right to require the Claimant to be examined by its Chief Medical Officer in North Billerica even though his office was approximately 180 miles from the Waterville Terminal where the Claimant worked. This was a legitimate requirement inasmuch as the Claimant had been off work due to sickness for several months.

It is clear from a reading of the Claimant's letter to the Manager of Car Maintenance at Waterville that he had refused to attend the August 23, 1990, examination scheduled for him with the Carrier's Chief Medical Officer. He was willing to attend that physical only if transportation was provided by the Carrier. However, the Claimant's Schedule Agreement did not entitle him to such transportation. Rather, he was entitled to the travel allowance set forth in Section IX and Section VIII C. of his Agreement. The Claimant owned an automobile but explained quite cavalierly that it was his private vehicle and the Carrier had no right to require him to use it on company business. How the Claimant travelled to North Billerica from his residence in the Waterville area was his business. Nevertheless, the Carrier had the right to require him to be examined by its Chief Medical Officer whose office was located in North Billerica and it was not obligated to furnish him with transportation to the physical with the Chief Medical Officer.

To this Board, the evidence clearly demonstrates that the Claimant willfully refused a legitimate order to report for a physical examination with its Chief Medical Officer. He never did attend the examination scheduled for August 23, 1990. The Claimant was therefore insubordinate when he refused to comply with a legitimate order given to him by a proper Carrier official. However, in the light of the Claimant's 20 years of service, his termination was excessive, in the judgment of this Board. He is therefore

ordered returned to service with his seniority intact subject, of course, to passing a physical examination by a Company physician. Naturally, the Claimant is not entitled to any back pay since he never did pass a physical with a Company physician.

AWARD: Claim sustained to the extent indicated in the FINDINGS.

Carrier is directed to make the within Award effective on or before thirty (30) days from the date hereof.

Robert M. O'Brien

Robert M. O'Brien, Neutral Member

E. F. Lyden

E. F. Lyden, Employee Member

R. E. Dinsmore

R. E. Dinsmore, Carrier Member

Dated: 3/26/92