

PUBLIC LAW BOARD NO. 2142

Award No. 7

Docket No. MW-1137

Case No. 17

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Illinois Central Gulf Railroad

Statement

of Claim: That Mr. E. L. Miller be restored to service with all rights unimpaired and paid for each day beginning May 23, 1977 and continuing until such time that he is restored to service.

Findings: The Board, after hearing upon the whole record and evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 23, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

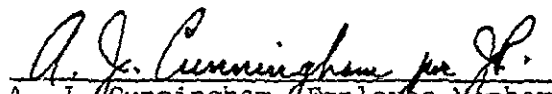
Claimant Trackman on May 11, 1977, was working as a member of Mobile Gang No. 104 installing crossties in a siding at Finger, Tennessee. He was instructed three times to nip ties and he refused each time to follow such instructions. Claimant was removed from service pending formal investigation. The investigation was held to determine whether or not Claimant failed to carry out the instructions given him by his foreman on May 11, 1977. Carrier concluded as a result thereof that Claimant had failed to comply with the instructions given him resulting in violation of General Notice, Rule K, Rule P and U of the Rules for the Maintenance of Way and Structures. He was discharged as discipline therefor.

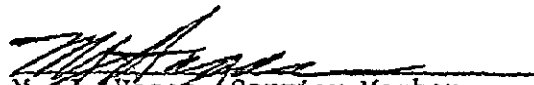
Claimant was accorded due process. There was sufficient credible and probative evidence adduced to support Carrier's conclusion as to Claimant's insubordinate conduct. It is quite clear that Carrier had proved its charge.

The Board usually does not interfere with the discipline assessed unless there be mitigating circumstances. Claimant, a ten year veteran, has been out of service since May 1977 and had been suffering from a bad back at the time. It would appear that Claimant apparently has learned his lesson. He will therefore be given one last chance to demonstrate his intent and desire to be a good and loyal employee. Claimant will be reinstated with seniority unimpaired but without any pay for the time out of service subject to his passing the usual return to service physical examination.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

  
A. J. Cunningham Employee Member

  
M. J. Hagen, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member