

Award No. 42
Case No. 42

Public Law Board No. 2203

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Consolidated Rail Corporation

STATEMENT
OF
CLAIM:

1. Carrier violated the Rules Agreement effective December 16, 1945, as amended, particularly Rules 5-A-1, 5-E-1 and the January 26, 1973 Agreement, when it assessed discipline of dismissal on M. W. Repairman M. L. Sayafino on April 24, 1978.
2. Claimant's record be cleared of the charge brought against him leading to trial on April 5, 1978.
3. Claimant be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Rule 6-A-1(d).

FINDINGS:

Claimant's dismissal is based by Carrier on his

absences without permission on March 14, 1977, April 20 and 21, 1977 and March 10, 1978. There is no evidence in the record before us of any other absences in almost seven years of service.

The applicable agreements must be interpreted in a reasonable manner. This is not a situation where an employee has been demonstrated to be irresponsible and unreliable so far as steady availability for work is concerned. While he was at fault in not obtaining permission for his absences, some regard should have been accorded his good record of service and the excuse he offered for the March 1978 absence.

At most, this record provides a valid basis for a suspension. We will direct Carrier to offer claimant immediate reinstatement with seniority rights unimpaired and pay for all time lost during the period beginning on September 11, 1978 and ending on the date he is offered reinstatement.

AWARD: Claim sustained to the extent indicated in last paragraph of Findings.

Adopted at Philadelphia, Pa., *August 14,* 1979.

ORDER: Carrier is hereby ordered to make the above Award effective on or before *September 14,* 1979.

Harold M. Weston
Harold M. Weston, Chairman

W. M. Derner
Carrier Member
Dissenting

Fred Campbell
Employee Member