

PUBLIC LAW BOARD NO. 2366

AWARD NO. 1

CASE NO. 13

CASE #1232 MW

FILE: 11-122-T-78

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman M. D. Jake was without just and sufficient cause and on basis of unproven charges (File 11-122-T-78; Case 1232 MW).
- (2) Claimant Jake shall be reinstated to service with seniority unimpaired and with pay for all time lost."

OPINION OF BOARD

On May 25, 1978, the Carrier notified the Claimant to attend a formal investigation on a charge of insubordination and absenting himself from his assignment.

Subsequent to the investigation, the Carrier determined that the Claimant was guilty of insubordination, and he was dismissed from service.

The record confirms that at approximately 1:00 p.m. on the day of the incident, the Claimant asked the Foreman if he could leave the property at approximately 2:00 p.m. so that he could keep an appointment with his Parole Officer.

The Foreman reminded the Claimant that he had been away from duty just before the day in question, and he should have attended to his personal business at that time. In any event, the Foreman states that he did not grant the

Claimant permission to leave at 2:00 p.m. Moreover, when the Foreman attempted to instruct the Claimant as to the proper method of installing cross ties, the Claimant refused to follow the instruction and he commenced using various profanity directed toward the Foreman. At 2:00 p.m., the Claimant did leave the property.

At the investigation, the Claimant testified that he followed the Foreman's instructions concerning the installation of cross ties and while he used certain language, he denied that he cursed at the Foreman, as such.

Although there was certain confusion of testimony concerning permission for the Claimant to drive his personal vehicle and warnings not to return to work the next day if he left at 2:00, nonetheless, the findings against the Claimant appear to be limited to the insubordinate conduct and not concerning a charge of leaving the property without permission.

It is, of course, not our function to substitute our judgment for that of the Carrier in these matters if, in fact, there is a showing on the record that the employee was guilty, as charged. We feel that such a showing was made.

The Board has struggled, however, with the question of the quantum of discipline imposed in this case, and without detailing a lengthy exploration of the various contentions made, we are of the view that the full imposition of termination from service may be excessively harsh, to the point that it would be considered arbitrary. We have recognized, of course, that there was not a finding of absence from duty in this case, but rather the matter was limited to one of insubordination. Of course, we do not condone, in any manner, insubordination and we re-emphasize the importance of proper compliance with instructions without obscene and profane language. Thus, a lengthy period of suspension was warranted. Based upon the entire record, and recognizing that the matter is not free from all doubt and that reasonable minds could differ, we are inclined to grant the Claimant a final chance to demonstrate his sincerity, and we will set aside the termination and restore him to service with retention of seniority rights and other benefits, but without any reimbursement for compensation lost during the period of the suspension.

#### FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

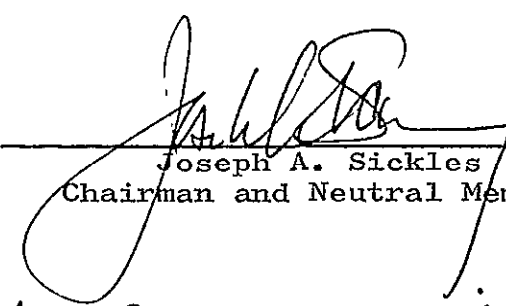
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.


This Board has jurisdiction over the dispute involved herein.

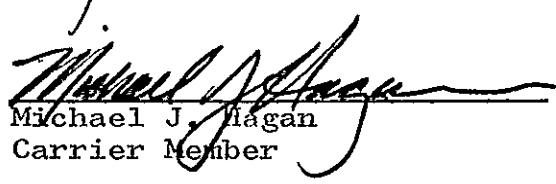
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

1. The termination is set aside.
2. The Claimant shall be restored to service with full retention of seniority and other benefits, but without reimbursement for any compensation lost during the period of the suspension.
3. Carrier shall comply with this Award within thirty (30) days of the date hereof.

  
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Joseph A. Sickles  
Chairman and Neutral Member

  
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Hugh G. Harper  
Organization Member

  
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Michael J. Hagan  
Carrier Member

  
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12/10/79  
DATE