

PUBLIC LAW BOARD NO. 2366

DOCKET NO. 37

AWARD NO. 25

CASE NO. 1398 MW

FILE: IL-164-T-80

PARTIES TO DISPUTE:

Illinois Central Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) The dismissal of Foreman J. L. Mulvaney was without just and sufficient cause and excessive discipline (Case No. 1398 M of W).
- (2) Foreman J. L. Mulvaney shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF BOARD

On September 3, 1980, the Claimant was notified of an investigation concerning an allegation that he was sleeping while he should have been on duty, and that a can of beer was observed in his hand at that time. Further, it was alleged that he was quarrelsome toward appropriate Carrier authority.

Subsequent to the investigation, the Carrier determined that he had violated certain enumerated rules concerning his being asleep; that he used and was in possession of an intoxicant during a prescribed tour of duty; and that he had, indeed, been quarrelsome.

The Claimant was scheduled to work from 6:00 a.m. to 2:00 p.m., and at approximately 10:00 a.m. on the day in question, two Carrier Officials inquired of his crew as to his whereabouts. The crew indicated that he had gone to "see something", but the Carrier Officials discovered him

asleep in a truck, which belonged to another employee. Further, it was determined that he had a can of beer in his hand.

When Claimant was awakened, he stated that he was ill and he had marked himself off of the time roll at 9:30 a.m. He was unable to produce the time roll, stating that it was elsewhere; when, in fact, it appears that it was in the truck with him.

The Claimant does not deny that he was asleep, and he seems to concede the existence of the beer; however he insists that he marked off sick prior to this incident and that he had left another individual in charge.

The record also substantiates the claim that he engaged in obscene gestures and used certain unfortunate language during the confrontation.

We have thoroughly considered the record before us, and we are unable to find anything of record which would suggest that the Carrier's conclusions were inappropriate. There is no evidence of record to substantiate the assertion that the Employee marked off sick, or that he left anyone else in charge. Certainly, no one was presented at the investigation to testify in corroboration of those assertions.

The record supports the conclusion that certain alterations were made to the time records at a later time, indicating that the Employee had intended to receive a full day's pay on the day in question.

The Claimant's testimony concerning the time roll was certainly not satisfactory. When he was asked why he had not produced the time roll when asked for it at the truck, he stated that he had already been pulled out of service and that therefore the Carrier Official "no longer had anything to do with me."

Based upon our thorough review of the entire record, we are of the view that the Carrier has presented substantive evidence to substantiate the charge, and we find no basis for altering the quantum of discipline imposed.

FINDINGS

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

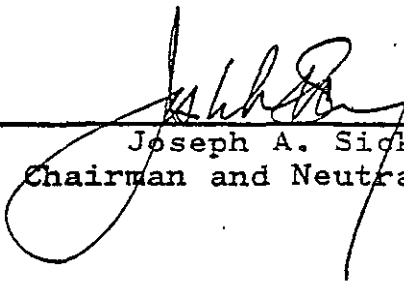
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.


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

AWARD

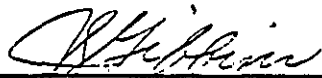
Claim denied.



Joseph A. Sickles
Chairman and Neutral Member



Hugh G. Harper
Organization Member



J. S. Gibbins
Carrier Member



DATE