

PUBLIC LAW BOARD NO. 2366

AWARD NO. 3

CASE NO. 14

CASE #1234 MW

FILE: La 176-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 Ervin Frye was without just and sufficient cause and on basis of unproven charges (File La 176-T-78 - Case No. 1234 MW).

(2) Claimant Frye shall be reinstated to service with seniority unimpaired and with pay for all time lost."

OPINION OF BOARD

The Claimant was notified of an investigation to determine facts and responsibility, if any, concerning an allegation that the employee left his job without permission and that he assertedly was untruthful to his Foreman in statements dealing with the need to be away from work.

Subsequent to the investigation, the employee was dismissed from service because of the unauthorized absence.

The Organization notes that the Claimant had requested permission to leave the work site early so that he could attend to certain personal business related to a recent move to a new residence, and that request was denied. Nonetheless, the Claimant left the job site on the date in question.

While the Organization recognizes that Rule P of the rules for the Maintenance of Way Structures Department prohibits absenting oneself from duty without proper authority, it stresses that this individual had sought permission, which was unreasonably denied. In fact, the Claimant, himself, denies that the permission was refused and he testified that he presumed, from an answer given to him by the Foreman, that permission had been reluctantly granted for him to leave.

Under all of the circumstances, including certain asserted disparate treatment, the Organization argues that the discipline imposed was clearly excessive, capricious, improper and unreasonable.

To the contrary, Carrier argues that the discipline imposed was appropriate to the offense. The record shows that the "utility company" in question was open and reasonably available to the Claimant during his off-duty hours - which he conceded to the Foreman - and under those circumstances, as well as others, the Foreman advised the Claimant that he did not feel that he could spare any men, inasmuch as another employee had requested permission the previous day to be off. That, coupled with the employee's prior record, according to the Carrier, justified the action.

We have reviewed the record and we are inclined to agree with the Carrier that this employee has demonstrated a tendency to substitute his judgment for that of the Carrier and he makes determinations as to what is best for all concerned, placing his personal desires ahead of the operation of the railroad.

It is interesting to note in this regard that the record indicates that the Claimant had been denied permission to leave by the Foreman, and at a later time when the Foreman was away from the area, the Claimant approached the Assistant Foreman and sought permission to leave - without advising of the prior refusal.

Of course, it is not incumbent upon us to make credibility determinations and/or to attempt to alter findings of fact unless there is no evidence of record to substantiate same.

We have considered the employee's prior record, and have found a significant amount of disciplinary action against the employee in a relatively short period of time.

Under the entire record, we find no basis for disturbing the Carrier's action, and we will deny the claim.

FINDINGS

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

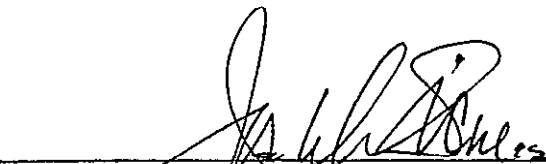
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.


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

AWARD

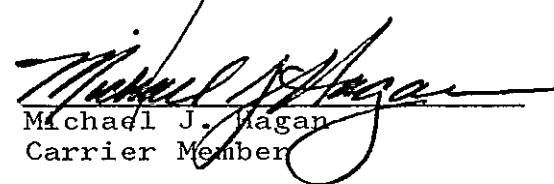
Claim denied.



Joseph A. Sickles
Chairman and Neutral Member



Hugh G. Harper
Organization Member



Michael J. Magan
Carrier Member

12/10/79

DATE