

PUBLIC LAW BOARD NO. 2366

AWARD NO. 57

DOCKET NO. 71

ORGANIZATION. FILE NO. MW-6-T-82

CARRIER FILE NO. 1549

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad

and

Brotherhood of Maintenance of Way  
Employees

STATEMENT OF CLAIM

"(1) R. C. Whitacre's permanent disqualification as Foreman and Assistant Foreman for alleged insubordination was without just and sufficient cause, arbitrary, capricious and on the basis of an unproven and disproven charge.

(2) Claimant R. C. Whitacre shall have his seniority as both Foreman and Assistant Foreman restored, compensated for the difference in rate of Foreman and Trackman while disqualified, compensated for any expenses incurred and compensated for all time he was withheld from service prior to the investigation."

OPINION OF THE BOARD

The Claimant was advised to attend the formal investigation concerning an asserted insubordination for allegedly refusing to obey a direct order to perform work.

Subsequent to the investigation, the Claimant was disqualified as a Foreman and/or Assistant Foreman.

The Claimant was working as a Track Foreman. At 7:00 A.M. on the day in question he was instructed by the General Foreman to begin work. However, he refused because he did not have "adequate protection against trains."

Testimony showed that the Claimant refused to have his men start working because he "...didn't have adequate protection". The Foreman told him specifically to assume work and not to worry about the trains because "...I had already taken care of that. I take care of the trains." The Claimant continued to respond in the negative stating that he wanted written authorization from the Foreman and stating that he had been ordered to perform the work. The Foreman advised him that he did not think it was necessary because preparations had been made to take care of the protection.

The Claimant concedes that the Foreman told him that he would take care of flagging the trains, but he did not feel that that was sufficient.

Certain credibility issues have been raised by the record. However, we have noted many times in the past that it is not incumbent upon a Board such as this to make credibility determinations and, if there is evidence of record to substantiate the Carrier's conclusions in that regard, we will accept those findings.

Some questions have been raised concerning a prior incident regarding this Employee and the fact that he was overly sensitive to flag protection.

No purpose is served by a lengthy review of the various arguments and contentions. Suffice it to say this Employee was given a valid instruction to work and to have his men perform work, and he refused to do so based upon a stated reason. He was given reasonable and valid assurance by his Foreman that those reasons were not cause for concern in this particular instance; yet, the Employee continued to refuse to perform work stating that he wanted a written assurance.

Obviously, the Carrier is not required to provide written verification every time an Employee raises a question.

We will deny the claim.

#### FINDINGS

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

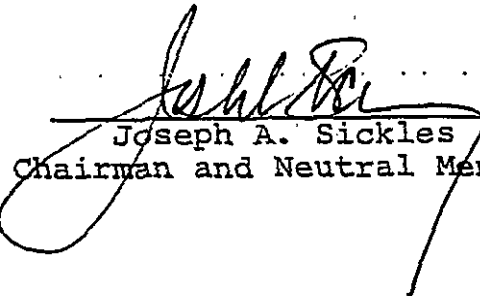
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

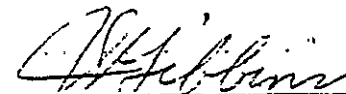
This Board has jurisdiction over the dispute involved herein.


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

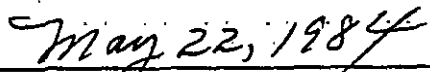
AWARD

Claim denied.

  
Joseph A. Sickles  
Chairman and Neutral Member

  
J. S. Gibbins  
Carrier Member

  
Hugh G. Harper  
Organization Member

  
Date