

PUBLIC LAW BOARD No. 2366

AWARD No. 80

DOCKET No. 96

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM

1. The dismissal of Trackman James A. Kerr was without just and sufficient cause and excessive. (Organization File MW-46-T-84; Carrier File 1655).
2. Claimant James A. Kerr shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF THE BOARD

The Carrier invites our attention to the Rule which permits Employees to charge lodging expenses for weekend nights, to the same extent that workweek expenses may be charged under certain circumstances which are enumerated in the Rule. Moreover, the Rule clearly places Employees on notice that harsh disciplinary action is contemplated for attempts to defraud the Company under that Rule.

The Employee in question charged certain expenses to the Carrier for motel rooms on two successive Sunday nights in April of 1984 and the Carrier asserts that the record clearly establishes that the Employee was not entitled to those expenses and that he was well aware of the lack of entitlement.

The Employee conceded the factual circumstances at the hearing and admitted that he became aware that he was not entitled to the benefits after it was explained to him. At that time, he offered to make restitution.

Clearly, there was a violation of the Agreement and the Employee may not avoid the consequences of his actions by merely stating that he had "lost the Agreement", since

he was obviously aware that some document authorized expense reimbursements and consequently was obligated to secure full knowledge of the terms which permitted the payment. However, the question of the deliberate character of the action has been placed at issue.

The Employee denies any attempt to defraud the Company of monies under the Rule in question or to engage in sharp practice or to falsely claim benefits. Here, the Employee freely attempted to pledge the Company's credit. He did not act in a surreptitious or clandestine manner which can be an indication of an honest mistake or a rather clear disregard for the consequences. The record is cloudy in that regard and we will give the Claimant the benefit of the doubt.

Certainly this, and other Employees, should be on notice that any willful dishonesty to be perpetrated against the Company will not be tolerated. This Award in this case is dictated solely by its own individual circumstances. We find the Claimant in negligent violation of the Rules but we do not find evidence of a wilful attempt to defraud.

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.

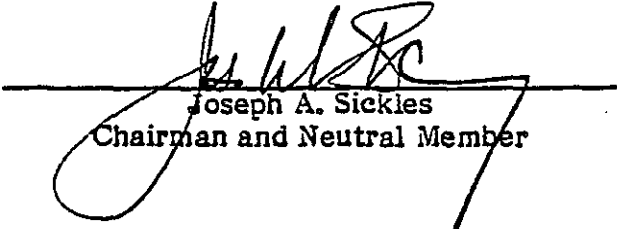
The parties to said dispute were given due and proper notice of hearing thereon.


AWARD

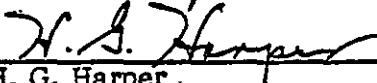
1. The termination is set aside.

2. The Employee shall be restored to service with retention of seniority and other benefits but without reimbursement for compensation lost during the period of the suspension.

3. Carrier shall comply with this Award within thirty days of the effective date.


Joseph A. Sickles
Chairman and Neutral Member


J. S. Gibbins
Carrier Member


H. G. Harper
Organization Member

September 30, 1985
Date