

Award No. <sup>22</sup>  
Case No. 32

Public Law Board No. 2778

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Baltimore and Ohio Railway Company

STATEMENT  
OF  
CLAIM:

Claim by Machine Operator Wendell M. Ratley for reinstatement and compensation for all wages and benefits lost since November 8, 1978.

FINDINGS:

Claimant, a machine operator with three years seniority, was dismissed for (1) striking a fellow employe with a club and (2) refusing to follow instructions to leave Railroad property after that incident. Carrier's findings are supported by substantial, though controverted, evidence consisting of testimony by Trackmen Zucco, Johnson and McVaught as to the first count and by Supervisors Lilley and Yaros as to the second.

It was not prejudicial error for Carrier to bar claimant from Company property even if his reason for entering the property was to obtain the names of witnesses. He as well as his Organization had orderly means at their disposal for locating witnesses and preparing for trial. Nor is the supervisor's failure to

give claimant a reason for ordering him off the property a ground for setting aside the dismissal. The proper course was for claimant to comply with instructions immediately and, if he considered them defective, to test their propriety subsequently through the grievance machinery of the Agreement.

Dismissal is not excessive discipline in the present situation.

AWARD: Claim denied.

Adopted at Baltimore, Md., *February 22*, 1984.



Harold M. Weston, Chairman



Carrier Member



Employee Member