

Award No. 39
Case No. 79

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 Foreman Gregory Hartley from ten-day actual suspension following a hearing on May 4, 1978.

FINDINGS:

The suspension is based on Carrier's finding that claimant was insubordinate by failing to comply with Manager Silbaugh's order to set up the Tamper.

There is substantial evidence in the record, consisting of testimony of Manager Silbaugh and Supervisor Soales, that claimant refused to comply with Mr. Silbaugh's instructions even though they were unambiguous and given four times.

Claimant admitted refusing to comply with the Manager's direct orders, but testified that his refusal were based on the fact that it was raining at the time. He testified that he is not required to comply with such instructions

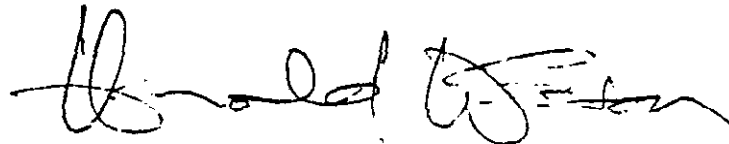
"if it is raining and nobody wants to work in the rain."

The record does not establish by competent proof that it was raining too hard for the men to work or that any reasonable safety hazard was involved in the work in question. Mr. Silbaugh volunteered to perform the specific work that allegedly might have produced an electric shock and displayed considerable patience in the entire situation.

AWARD:

Claim denied.

Adopted at Baltimore, Md., *September 5,* 1984.



Harold M. Weston, Chairman



Carrier Member



Employee Member