PUBLIC LAW BOARD NO. 3514

Case No. 116 Award No. 103

PARTIES

Brotherhood of Maintenance of Way Employes

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DISPUTE:

Consolidated Rail Corporation

STATEMENT OF CLAIM: Appeal of Welder R. J. Higgins to have 30 days suspension removed.

FINDINGS: Subsequent to an investigation held on February 1, 1985, the Claimant was found guilty on January 8, 1985, of failure to follow his Supervisor's instructions.

The Organization strenuously protests the Carrier's actions both on procedural grounds and with respect to the substance of the charge. It essentially argues that the Claimant was prejudged, as evidenced by the hearing transcript. Moreover, also relying mainly on the testimony adduced during the investigation, it asserts that the Carrier has not met its burden of proof.

We have thoroughly reviewed the record before us and, while we recognize the Organization's contentions with respect to prejudgment, we conclude that the Claimant was afforded the essentials of due process protections.

With respect to the substance of the Carrier's charge, we find that the Claimant was in error in his actions. Failure to follow legitimate instructions is a serious offense for which the Carrier may take appropriate disciplinary measures. However, in

this case, a close review of the relevant testimony and the circumstances leads this Board to conclude that the discipline assessed was overly harsh and excessive.

AWARD

The claim is sustained to the extent that the suspension is reduced to fifteen (15) days.

F. J. Domzalski Carrier Kember Eckehard Muessig
Neutral Member

W. P. Cassese Employee Member

Dated: FEB 27 1986