

PUBLIC LAW BOARD - No. 3514

Case No. 130 Award No. 120

PARTIES Consolidated Rail — Brotherhood of Maintenance
to Corporation and of Way Employees
DISPUTE:

STATEMENT OF CLAIM:

Appeal of Trackman James A. Welch to have his discipline of dismissal set aside and to be restored to the service.

FINDINGS: In this dispute, the Claimant had been dismissed from the service subsequent to a hearing, held in absentia, and upon a conviction of falsely claiming continuing disability after an on-the-job injury.


The Carrier mainly relied upon the testimony of its officials at the hearing, along with still photos and video tape, to determine that the Claimant was guilty of the charges levied against him. The visual evidence showed the Claimant engaged in operating a lawn mower in front of his home. The Carrier avers such activity, by the Claimant, shows that he was able to perform his duties for the Carrier.

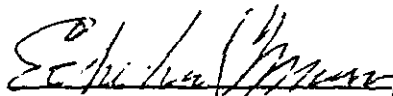
The Claimant, of his choice, was not present at the investigation held in connection with his alleged violation. Certainly, the Board does not prefer an investigation in which the Claimant did not participate. However, it is clear that the


Claimant's failure to appear at the proceedings was of his own choice. Moreover, we find that the hearing was conducted in a proper manner and that the Claimant was skillfully and aggressively represented throughout by the Organization. After carefully considering all the evidence of record, we find that the Carrier's action stands a test of reasonableness under all of the circumstances, and we have no basis for disturbing the discipline assessed.

AWARD

The claim is denied.


E. J. Domzalski
Carrier Member


Eckehard Muessig
Neutral Member


J. P. Cassese
Employee Member

Dated: DEL 4 1986