

Award No. 19
Case No. 26

Public Law Board No. 3514

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Consolidated Rail Corporation

STATEMENT
OF
CLAIM:

Appeal by Robert McLin from his dismissal, effective January 30, 1981 from Carrier's service.

FINDINGS:

Claimant, an employee with about five years service, was dismissed for insubordination and threatening Assistant Supervisor of Track Wardell.

The testimony of Mr. Wardell shows that claimant failed to comply with instructions to oil the lead "after we burned the switches." There is no evidence that it would have been unsafe for claimant to follow those instructions. When Wardell spoke to claimant regarding his failure, according to Wardell, claimant pointed his finger at him and cautioned him that he had better watch his step and repeated that statement when Wardell asked claimant "if he was threatening me." Mr. Wardell's testimony in that regard was corroborated by Supervisor McCartney and Asst. Division Engineer Edwards.

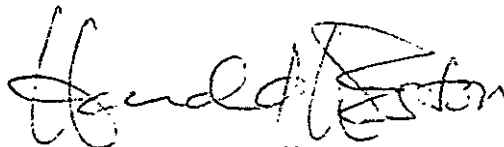
Carrier's findings are supported by substantial evidence. The record does not provide a persuasive basis for

upholding claimant's contention that he did not mean the comment to "Watch your step" to be construed as a threat. The testimony is that he made the statement in a serious and direct manner.

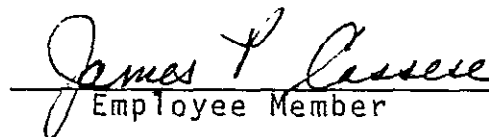
It was not inappropriate for Carrier to take into consideration the fact that claimant had been previously suspended for insubordination in November 1975 and been dismissed in February 1976 for insubordination on January 29, 1976; he was restored to service on a leniency basis in June 1976.

AWARD: Claim denied.

Adopted at Philadelphia, Pa., October 4, 1984.



Harold M. Weston, Chairman


Carrier Member
Employee Member