

PUBLIC LAW BOARD NO. 3514

Case No. 78

Award No. 69

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


STATEMENT OF CLAIM: Appeal of Trackman, David H. Hiser, to have his dismissal set aside and to be restored to the service.

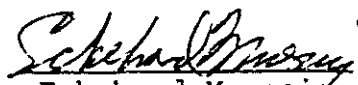
FINDINGS: Subsequent to an investigation, the Claimant was found guilty of insubordination and was dismissed from the service. The incident leading to this dispute occurred when the Claimant threw a hard hat, hitting a supervisor on the side of his head.

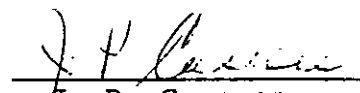
The evidence is clear and convincing, as acknowledged by the Claimant's own testimony, that he was guilty of the charge. However, while the Board does not minimize the seriousness of the offense herein, which does warrant disciplinary action, the Board is of the opinion that, in consideration of all the circumstances leading up to and surrounding the actual incident, permanent dismissal was excessive. The Board will award that the Claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of service.

AWARD

Claim sustained to the extent indicated in the Findings.


F. J. Domzalski
Carrier Member


Eckehard Muessig
Neutral Member


J. P. Cassese
Employee Member

Dated: AUG 21 1977