

Award No. 3
Docket No. 3

PUBLIC LAW BOARD NO. 3666

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and
Indiana Harbor Belt Railroad Company

STATEMENT Claim of Richard Ramirez that his thirty (30)
OF CLAIM: day deferred suspension issued on
December 29, 1983, be removed from his record
and that he be compensated for lost earnings
if any were sustained.

FINDINGS: By reason of the Agreement entered into by and
between the parties on June 13, 1984, and upon
all of the evidence in the record, the Board finds that the
parties hereto are respectively the employe and the carrier
as defined in the Railway Labor Act, as amended, and that
it has jurisdiction in this proceeding.

In a letter dated December 8, 1983, Claimant was
notified that an investigation would be held to determine his
responsibility, if any, relating to a personal injury he sustained
on November 7, 1983, while walking in the middle of Track 21 at
C. P. Hill in Bellwood, Illinois, and for his absence from work
on November 16, 17, 18, 21, 22, and 23, 1983. The investigation
was held on December 14, 1983, and on December 29, 1983 Claimant
was assessed a thirty (30) day suspension to be held in abeyance
for a period of one (1) year.

Claimant was track foreman for a surfacing gang on
November 7, 1983. Two personal injury reports were introduced
in evidence, both dated November 7, 1983. Both reports show that
the Claimant, while walking in the middle of Track #21 stepped
on iron-ore - which was on the top of ties, that he slipped and
fell down. He suffered a muscle strain in his left shoulder and
in the left side of his neck. Jessie Garcia took him to the
Southeastern Industrial Medical Center where x-rays were taken
and a heating pad was applied to his shoulder. The doctor also
prescribed medication which contained a narcotic drug. This

prescription was recalled when the Claimant told the doctor that he was recovering from treatment for alcoholism. Instead, the doctor told him to wear a brace at night. He could not wear one during the day because it restricted his movements as a foreman. He also visited the Southeastern Industrial Medical Center on November 9, 1983, and he was instructed to return in two (2) weeks.

Claimant returned to the clinic on November 23, 1983 and November 30, 1983. He received physical therapy at the Clinic on December 1, 5, 7, 9 (cancelled) 13 and 15, 1983. Except for one time, he was driven to and from the Clinic. He drove once.

Claimant worked his scheduled hours on November 7, 8, 9, 10, 11, 14 and 15, 1983. November 12 and 13, 1983 were his scheduled rest days. He did not report for work on November 16, 17, 18, 21, 22 and 23, 1983. On each of the latter dates the Carrier wrote to the Claimant that he was absent without authorization, in violation of Rule T for Conducting Transportation and for violating 29(a) of the Agreement between the parties.

Notwithstanding these daily letters, the record shows that the Claimant visited his personal physician on November 15, 1983, who advised him not to work for one week. At 2:30 P.M. on that day, the Claimant called Richard Markase, the Chief Clerk in the Maintenance of Way Department and told him that his personal physician ordered him to stay home for one week. On November 16, 1983, Claimant took his doctor's note to Francisco San Miguel, a fellow worker, and asked him to give it to Claimant's supervisor, Alex Orozco. There is no categorical denial that Orozco received this copy. And on November 17, 1983, Markase called Claimant at his home and advised him that he had an appointment with Carrier's doctor on November 23, 1983.

Claimant saw his physician on November 22, 1983, who approved his return to work. He returned to work on November 23, 1983.


The record discloses that the Claimant used all due care and caution for his own safety, he did not run, he walked; he watched for defective ties, he slipped off the iron ore while he was trying to tell another maintenance of way employe about a broken rail. He did not violate Safety Rule 3030 or any other safety rule.


As for his absences on November 16, 17, 18, 21, 22 and 23, 1983, the Carrier was well aware that the Claimant saw his personal physician on November 15, 1983, who advised him to stay home for one week. It is beyond comprehension to understand why the Carrier wrote successive absence letters for those days when it had full knowledge of the reasons for Claimant's absences.


For all these reasons, the Board finds that the Claim is valid and that the suspension penalty should be expunged from Claimant's record. There is no evidence that the Claimant lost any earnings by reason of Carrier's action. He is entitled to no compensation.

AWARD

Claim sustained in accordance with the findings.


DAVID DOLNICK, Chairman and Neutral Member


J. K. BEATTY, Carrier Member


WILLIAM E. LA RUE, Employee Member

DATED: Jan. 23, 1985