

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5735**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
JOSEPH A. MARKASE, CARRIER MEMBER
D. D. BARTHOLOMAY, ORGANIZATION MEMBER**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

INDIANA HARBOR BELT RAILROAD COMPANY

Award No. 4
Case No. 4

*Date of Hearing - October 6, 1997
Date of Award - February 13, 1998*

Statement of Claim:

Claim of the System Committee of the Brotherhood that:

1. The fifteen (15) day suspension assessed Truck Driver Hector Gomez for his alleged insubordination to Track Supervisor J. N. Garcia and distraction of Company property at approximately 7:10 A.M. on May 8, 1995 was without just cause and in violation of the Agreement. (Carrier's File No. MW-95-051.)
2. Truck Driver Hector Gomez shall now be exonerated of the charge and made whole for all lost wages, benefits and credits.

FINDINGS:

Public Law Board No. 5735, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

At the start of his work-day on May 8, 1995, the herein Claimant, Mr. Hector Gomez, a truck driver with 24 years service, was in a meeting in the office of Carrier's Track Supervisor. The Supervisor told Claimant's Track Foreman and several other members of the crew, including Gomez, that their assignment for the day was to crib out the crossing diamond at the Calumet Interlock. While the remainder of the crew was assenting to the assignment, Claimant arose from the chair he was sitting in, repeatedly shouted the expletive, "Fuck, I don't have to do it," walked down a hallway and kicked open a door, damaging it. Carrier cited Claimant to attend an investigation on charges of insubordination and causing damage to Company property. Following the investigation, Claimant was disciplined with a fifteen day actual suspension.

The Organization has appealed the discipline to this Board on a variety of grounds. It maintains that Claimant made no threats to any supervisor and that he did in fact obey the

instructions given to him at the time. With regard to the damage to the door, the Organization notes that it was old and battered, and that it was stuck when Claimant attempted to exit the facility. Carrier argues that it established with credible evidence that Claimant was indeed guilty of the charges placed against him. It notes that it is undisputed that Claimant cursed at the time he was given a legitimate work order, and that his conduct was threatening. Further, he admitted that he damaged Company property. And, even though he eventually did his work assignment, his conduct was uncalled for, and the suspension was appropriate.

The Board notes that Conduct such as that exhibited by Claimant when he was being given an appropriate work assignment is disruptive, insubordinate, and need not be tolerated by any employer. Right or wrong, good or bad, management is privileged to make work assignments and employees given these assignments are expected to carry them out. Claimant's position as a subordinate to the Track Supervisor does not vest him with license to be argumentative and disruptive when work assignments are being made. While he would be privileged to question the propriety of a perceived inappropriate work order he may do so only in a civilized manner. His conduct on May 8, 1995, cannot, by any measure, be considered as civilized. If the order is considered as inappropriate, Claimant must still follow the directives of his Supervisor, obey the order, and seek redress later through the grievance procedures established in the Agreement.

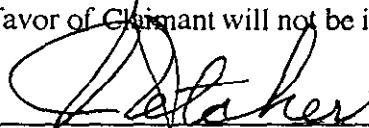
The Board finds that there is no basis in this record to modify the discipline assessed. The claim will be denied.

A W A R D

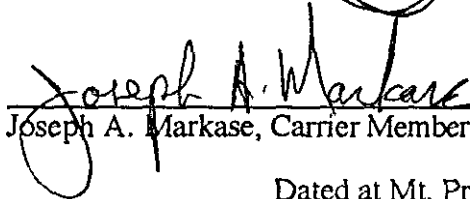
Claim denied.

O R D E R

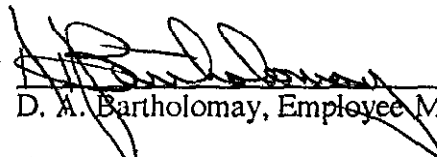
An award in favor of Claimant will not be issued.



John C. Fletcher, Chairman & Neutral Member



Joseph A. Markase, Carrier Member



D. A. Bartholomay, Employee Member

Dated at Mt. Prospect, Illinois., February 13, 1998