

**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. 5  
Case No. 5

*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 thirty (30) day suspension assessed Track Foreman Kevin Harris for his alleged insubordination to Assistant Track Supervisor R. L. Porter on May 20, 1996, was without just and sufficient cause, based on an unproved charge and in violation of the Agreement. (Carrier's File MW-96-020.)
2. Track Foreman Kevin Harris shall now have his record cleared of the charges and he shall be compensated for all wage loss suffered.

**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.

The herein Claimant, Kevin Harris, has been an employee in Carrier's Track Department for twenty-three years. He has worked as a Track Foreman for seventeen years. On May 20, 1996 Claimant worked a regular assignment as a Track Foreman. Near the end of his shift Carrier's Track Supervisor authorized Claimant to work overtime as a Track Laborer to assist in finishing up a derailment cleanup in Carrier's Blue Island Yard. While on overtime, Claimant was instructed by a Supervisor to do some work on the Rip Lead Road Crossing. Claimant refused, contending that he was a Foreman, it was not his job, and that he would not work as a Laborer. Claimant was cited to attend an investigation on a charge of insubordination, following which he was disciplined with a thirty day suspension.

The Organization has appealed the discipline to this Board on a variety of grounds, both procedural and substantive. It argues that the charges leveled against Claimant are

vague and do not specify that Claimant did anything wrong. It contends that the hearing was procedurally defective and that Carrier failed to sequester witnesses. Further testimony was accepted that was hearsay, biased, contradictory, and irrelevant. Finally it accuses Carrier Supervisors of having a documented history of poor judgment and making mistakes.

Carrier responds that the evidence is conclusive that Claimant refused to obey a direct order while he was working as a Laborer to perform Laborer's duties.

It is not necessary for the Board to visit any of the arguments advanced by the Organization in defense of Claimant's conduct, because, by any measure Claimant is guilty of willful insubordination. Even if he was cloaked with the mantle of Foreman at the time of the incident, Claimant simply is not privileged to refuse to do work directed to be completed by a superior officer. Additionally, as long as the order did not place Claimant in an unsafe working environment, was not morally degrading, and was within the competence of his mental and physical abilities, it should have been followed. The inmates do not run the institution. Carrier is privileged to give orders even if they are not well thought out and even if they may be wrong, neither of which element seems to be present here.

There is absolutely no merit to the contentions advanced by the Organization. The claim will be denied.

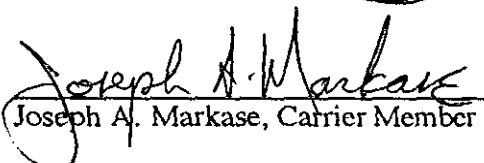
## A W A R D

Claim denied.

## O R D E R

An award favorable to 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