

**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. 8
Case No. 8

Date of Hearing - May 8, 1998
Date of Award - May 31, 1998

Statement of Claim:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Machine Operator Juan Olvera for his alleged unauthorized use of a front end loader and the unauthorized removal and attempted sale of company material on June 20, 1997 was without just and sufficient cause and excessive punishment. (Carrier's File MW-97-039.)
2. Machine Operator Juan Olvera shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage losses 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.

On June 20, 1997, Claimant (a long term employee with 26.5 years of service) entered Carrier's property at approximately 5:00 am and used a Carrier end loader to pick up two tubs of zinc (valued at \$3,300.00) and transport them to a nearby recycling scrap yard. After depositing the zinc in the scrap yard Claimant returned the end loader to Carrier property and then drove his own vehicle to the scrap yard to await its opening at 7:00 am. The scrap yard refused to purchase the zinc from Claimant and told him to remove it from their property. They also notified the Blue Island, Illinois Police Department of the incident (who apprehended Claimant) who in turn notified Carrier's Police Department of the arrest. When questioned by the Blue Island Police and Carrier Police, Claimant admitted that he removed the zinc from Carrier property and attempted to sell it for his personal gain. Claimant was removed from service and cited to attend an investigation. After the conclusion of the investigation, held on September 30, 1997, Claimant was dismissed.

The Organization has appealed the dismissal to this Board on the grounds that Claimant in a straight forward fashion admitted his involvement in the incident, he is a long term employee which should be taken into account, his conduct on June 20, 1997 should be excused in part because he was under the influence of drugs at the time, he is now actively participating in Narcotics Anonymous, the criminal charges were dismissed, thus the discipline was harsh and excessive.

The Board is not persuaded that any of the contentions advanced in Claimant's behalf possess merit. It is obvious from review of Claimant's actions on June 20, 1997, that a premeditated effort was exerted by him to remove Carrier property of substantial value and sell it for his own profit. As a long term employee Claimant was most surely aware that the theft of Carrier property cannot be tolerated. Furthermore, discipline of discharge even for a first attempt at theft is not inappropriate. That Claimant may have been under the influence of drugs at the time is also not a valid excuse for his attempted theft. Drug induced crime has become a plague in this Nation. In such circumstances a carrier need not overlook the theft of its property any more than a convenience store operator would be expected to, when stuck-up by a drug addict looking for money to support his habit. Finally, that the courts did not convict Claimant for his admitted attempted theft does not make the matter any less serious, with regard to his continued employment status. It has often been said in this industry that Courts and Adjustment Boards have different standards of determination. Claimant admitted that he attempted to steal from his employer. This admission makes him unsuitable for continued employment, even though the Courts may have concluded that incarceration or a fine would not be necessary.

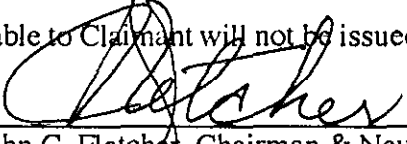
The grievance is without merit. It will be denied.

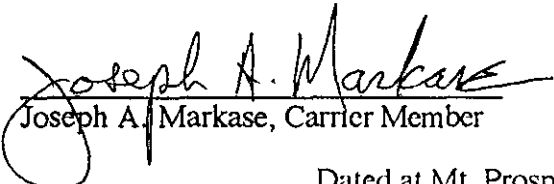
A W A R D

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, May 31, 1998