PUBLIC LAW BOARD NO. 1850

Award No. 2

Docket No. 3
Org. File No. BALT-W-202
Carrier File: 2-MG-1483

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Baltimore & Ohio Railroad

Statement of Claim: Claim filed on behalf of Trackman Haskell J. Wallace, Baltimore West End, for restoration of his seniority and reimbursement for all time lost at the applicable rate of pay as a result of being assessed discipline of thirty (30) days actual suspension following a hearing on November 12, 1975, for his refusal to obey a direct order from his supervisor on October 31, 1975.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 27, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Claimant Trackman, headquartered at Bay View Yard, Baltimore, Maryland, was a member of the Float Gang on October 30, 1975. He had been assisting in the removal and placement of ties on the [illegible]op Track. His Track Supervisor arrived at that location and after reviewing the work, ordered Claimant twice to assist some trackmen to pull out some ties. It was alleged that Claimant, at first, failed to do so and thereafter he alleged he had pulled stomach muscles. The track supervisor told Claimant that the Company would send him to the hospital. Claimant allegedly refused to go there. He was thereafter taken out of service.

As a result thereof, an investigation was set up and Claimant charged with:

"...refusing to work, refusing direct orders from your Track Supervisor, and refusing a medical examination to determine your fitness for duty on October 31, 1975..."

Claimant was found guilty as charged and received a thirty (30) days actual suspension from service as discipline therefore.

The Board finds that Claimant was accorded due process. He was properly charged, was represented, had witnesses, faced his accusor and his right of appeal was exercised on his behalf.

The transcript reflected conflicting and contradictory testimony. However, Carrier, as the trier of the facts, properly determinated the credibility of the witnesses and evaluated the evidence adduced. Carrier knows the men and is therefore more capable of appraising their motives and prejudices. The mere fact that a greater number of witnesses testified on one side than on the other is not determinative of the conclusion reached as evidence is to be weighed and not weighted.

The Board, on the record presented, does not find that Carrier abused its discretion. While reasonable minds might differ as to the conclusion reached, the evidence adduced does support a conclusion that Claimant had failed to comply with his supervisor's instructions.

As to the discipline assessed, the Board finds that in view of the nature of the offense committed, an act of insubordination, the discipline imposed was not unreasonable.

Consequently, in the circumstances, we shall deny the claim.

Award: Claim denied.

A. J. Cunningham, Employee Member

L. W. Burks, Carrier Member

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Atlanta, Georgia, June 9, 1977.