

PUBLIC LAW BOARD NO. 1850

Award No. 22

Docket No. 69
BMWE File AK-18
Carrier File 2-MG-2013

Parties Brotherhood of Maintenance of Way Employes
to and
Dispute The Baltimore and Ohio Railroad Company

Statement of Claim Claim on behalf of Trackman Kenneth R. Whitfield, Akron portion of the Akron-Chicago Division, for reinstatement to the Carrier's service as a result of being dismissed from the Carrier's service on account of his absence from duty without permission from proper authority on August 11, 1977 and in conjunction with his previous record of unauthorized absences.

Findings The Board, after hearing upon the whole record and all evidence, finds 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 hearing held.

Claimant Trackman, who had been employed as such for some four (4) years as a result of an investigation held on August 31, 1977 in connection with the charge of being absent from duty on August 11, 1977 without permission from proper authority, was found guilty as charged and was dismissed from service under date of September 19, 1977.

Claimant produced one witness and the names of two other alleged witnesses, who were unable to be present due to circumstances beyond their control. Claimant alleged that such witnesses would have attested to the fact that he had received permission to be off on August 11, 1977. The one witness that did appear on his behalf did testify that Claimant did speak to his foreman about being off on August 11th on personal business. However, when questioned by his own General Chairman the testimony of such witness became conflicting to the extent that he testified that "he didn't exactly hear what he said".

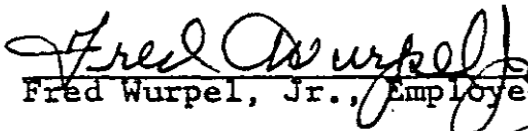
The Board finds that Claimant was given a hearing consistent with Rule 48 "Discipline". He received the due process required thereunder.

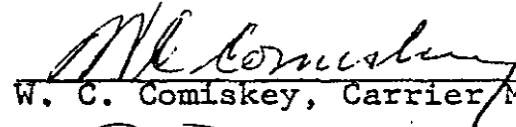
There was a conflict in testimony which Carrier properly resolved. There was sufficient evidence to support Carrier's conclusion as to Claimant's culpability.


Claimant's service record is not the most desirable one. However, the Board finds that there is a question of nagging doubt here because of the absence of the two witnesses and Claimant should be given benefit thereof. He shall be provisionally reinstated, with all rights unimpaired, but without pay and placed on probation for one year, subject to first meeting with his and Carrier's

Local Representatives in order to clearly understand what his responsibility and duty towards protecting his employment and that he must request and receive permission to be absent and that this Award represents his "last chance" opportunity to now demonstrate whether he desires to work for the Baltimore and Ohio Railroad.

Award Claim disposed of as per findings.
Order Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


Fred Wurpel, Jr., Employee Member


W. C. Comiskey, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, April 15, 1980.