

PUBLIC LAW BOARD NO. 2142

Award No. 8

Docket No. MW-1156

Case No. 23

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Illinois Central Gulf Railroad

Statement

of Claim: Carrier unfairly dismissed Trackman Milton Speight from Carrier's service as of August 25, 1977. Claimant Trackman Speight be now returned to former position with rights unimpaired and that he be paid 8 hours each work day and for any overtime made by his gang while he is off duty.

Findings: The Board, after hearing upon the whole record and 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 January 23, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant entered service November 3, 1976 as a trackman. He was notified, July 14, 1977, in writing, by his foreman that his record disclosed excessive absenteeism and that failure of improvement would result in a formal investigation.

Claimant was sent a notice of investigation, August 3, 1977, to attend formal investigation August 8, 1977 to determine whether he had been excessively absent without permission. As a result of the investigation held August 15, 1977, Carrier concluded that Claimant was

guilty as charged. He was dismissed from service August 25, 1977 as discipline therefor.

Claimant was accorded a fair and impartial hearing. There was sufficient competent and credible evidence adduced to support Carrier's conclusion as to Claimant's culpability. The record clearly reflects that Claimant was excessively absent without permission. He was absent 6 days in May without permission, 6 in June and 8 in July. He was suspended 7 days during this 63 work day period for being absent without permission. Thus, he was absent from work almost 1/2 of the potential work period. The record shows that Claimant had been spoken to, frequently warned that he had to report on time and that he was obliged to request permission of proper authority to be off when unable to be at work. Claimant testified that he was aware of the rules and that he had been placed on notice. The record reflects that he had not changed his poor work habits.

As pointed out in Second Division Award 5049 (Johnson):

"Nothing in the Agreement obligates the Carrier to attempt to operate its railroad with employees repeatedly unable or unwilling to work the regular and ordinarily accepted shifts, whatever reason or excuse exists for each absence, and even without the complication of work for other employers. His practice if permissible for him, is permissible for all employees."

Claimant's record indicates an indifference to his obligation to protect his assignment. This is particularly so after being given warnings and opportunities for correction. Carrier's assessment of

dismissal, is in the circumstances held to be reasonable discipline.

This claim will be denied.

Award: Claim denied

A. J. Cunningham per J.P.
A. J. Cunningham, Employee Member

M. J. Hagen
M. J. Hagen, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member