

Award No. 43
Case No. 43

Public Law Board No. 2203

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Consolidated Rail Corporation

STATEMENT
OF
CLAIM:

1. Carrier violated Agreement of December 16, 1945, as amended and the January 26, 1973 Agreement when it assessed discipline of dismissal on Trackman J. K. Hatfield, May 8, 1978.
2. Claimant's record be cleared of the charge brought against him April 11, 1978.
3. Claimant be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Rule 6-A-1(d), with restoration of benefits.

FINDINGS:

Such extreme disciplinary action as dismissal must be based on a clear and strong record. In

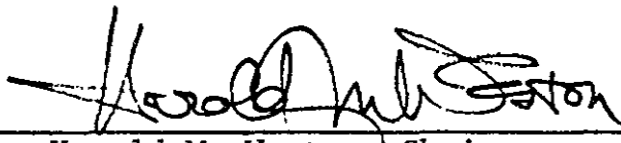
this case the record shows that claimant had received a warning for an absence on February 7, 1978, and thereafter was absent on February 15, 21, 22 and 23 without permission. However, the sketchy evidence that was produced at the hearing did not adequately explain away some of the uncertainty regarding claimant's absences on February 22 and 23, particularly with respect to his testimony that he had been bumped by February 22 and was in jail on February 23. (There is no contention that the time in jail played any part in Carrier's decision to dismiss claimant). Claimant's prior record has not been introduced in evidence.

Because of its unclear nature, this record does not provide a sound foundation for dismissal. We will direct Carrier to offer claimant immediate reinstatement with seniority unimpaired but without back pay.

AWARD: Reinstated without back pay.

Adopted at Philadelphia, Pa., *August 14,* 1979.

ORDER: Carrier is hereby ordered to offer reinstatement on or before *September 14,* 1979.



Harold M. Weston, Chairman



Carrier Member



Employee Member