

PUBLIC LAW BOARD NO. 2366

AWARD NO. 17

CASE NO. 23

CASE NO. 1278 MW

FILE: IL-140-T-79

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) The thirty (30) work day suspension imposed upon Trackman Gene Tomes for alleged failure to respond to an emergency call to duty was without just and sufficient cause (Case No. 1278 M of W).
- (2) Trackman Gene Tomes shall be compensated for all wage loss suffered during the thirty (30) day suspension."

OPINION OF BOARD

The Claimant was instructed to report for an investigation concerning an alleged failure to respond to an emergency call for duty.

Subsequent to the investigation, the Carrier determined that the Claimant was in violation of Rule "P", and was suspended without pay for thirty (30) days.

Rule P specifies that employees are expected to report for duty unless excused by appropriate authority.

The Claimant was scheduled to work - and did work - on January 26, 1979, and at the conclusion of that shift, he and two other employees were instructed to report to work on the next day, i.e., Saturday, January 27, 1979 because of a heavy snow fall and the necessity to keep switches clear of snow.

The Carrier insists that all three members of the crew were present when the announcement concerning the Saturday work was made, and that none of the men voiced any opposition to performing the emergency work. However, the Claimant did not report for duty on the following day. To the contrary, the Organization insists that because of recurring back problems the Claimant informed the Foreman, on January 26, "There's no way of me working Saturday." Further, according to the Employees, had the Claimant reported for duty, he still would not have been able to perform any service due to his back problem. In this regard, the Claimant relied for corroboration on a statement from his physician, dated January 29, 1979, which stated that the Claimant was "physically unable to work overtime due to chronic lumbar sacral sprain and strain and previous back surgery."

The Track Foreman insists that he specifically advised the Claimant that it would be necessary for him to work on Saturday, January 27, 1979, and the Claimant failed to answer him, which prompted the Foreman to ask if he had understood what had been stated to him, and the Claimant responded in the affirmative. Further, the Foreman testified that the Claimant did not notify him at any time before the Saturday reporting time that he would be unable to work.

The other two Trackmen who were notified of the Saturday work at the same time both testified that the Claimant was present when the Foreman notified them of the necessity to work on Saturday, and neither heard the Claimant make any statement indicating that he would be unable to perform said work.

Initially, we are confronted with a credibility dispute, and as has been written on numerous occasions by Referees in this industry, a Board such as this is without authority to resolve credibility questions and, by and large, with certain exceptions not here material, we are required to accept the credibility determinations made by the individual who heard the evidence.

Here, it would appear that there is no question that the Carrier's acceptance of the Foreman's version was based on substantive evidence because it is confirmed by the two other employees who were present when the instructions were made. As we view the case, it is relatively immaterial at this point in time whether the employee was, or was not, physically capable of performing work on the day in question; but rather, we are impressed by the fact that the Claimant - if indeed he had a back problem - took no steps to notify the Carrier of that asserted inability. Thus, we find that the Employee did violate Rule P.

We have not lightly ignored the assertion by the Claimant that he has 27 years of unblemished service, and in normal course we would certainly feel that such service should be taken into consideration when assessing discipline. However, in this case, when one realizes the severity of a failure to report to work - and indeed a failure to notify the Carrier of the fact that he would not report to work if his back started bothering him after he left work - could have led to rather serious consequences in the potential emergency situation that confronted the Carrier on the day in question.

Accordingly, we will refrain from any inclination to disturb the amount of suspension assessed, and we will deny the claim.

#### FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

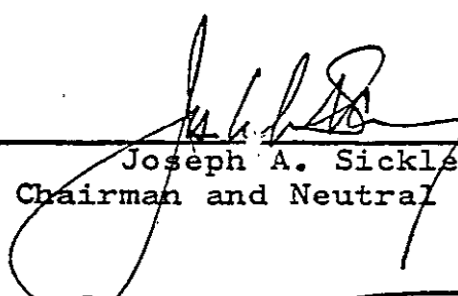
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

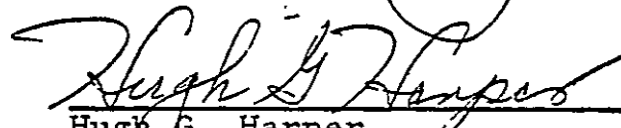
This Board has jurisdiction over the dispute involved herein.

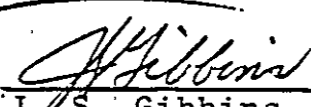
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

Claim denied.

  
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Joseph A. Sickles  
Chairman and Neutral Member

  
\_\_\_\_\_  
Hugh G. Harper  
Organization Member

  
\_\_\_\_\_  
J. S. Gibbins  
Carrier Member

  
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7/14/31  
DATE