

PUBLIC LAW BOARD NO. 2366

AWARD NO. 21

CASE NO. 33

1332 MW

C-105-T-80

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) The dismissal of Trackman James E. Massey for alleged failure to promptly report an injury was without just and sufficient cause and on the basis of unproven charges (Case No. 1332 M of W).
- (2) Trackman James E. Massey shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF BOARD

The Claimant was notified to attend an investigation concerning an allegation that he was injured on October 31, 1979, but failed to report same until November 5, 1979.

Subsequent to the investigation, the Carrier terminated the Employee's service with the Carrier.

The Carrier asserts that the Claimant injured his back on October 31, but he did not mention this to his Supervisor; and on November 1, he called the General Foreman indicating that the doctor "had him off work", but he did not mention that he was injured until sometime after 4:00 on November 1, when he contacted the Track Foreman and indicated that he was hurt.

On November 5, 1979, the Claimant filed a report of injury with the Claim Agent.

The Carrier advises that Rule 1 of the Carrier's Safety Rules requires that employees report promptly any injury sustained on duty or on Company property, and further provides that notification of the injury must be made prior to the end of the employees' tour of duty and before leaving Company property. Further, the record seems to indicate that the Employee was well aware of the requirement to report personal injuries, despite the fact that he stated at the investigation that he was not familiar with the requirement.

The Employee states that he did not feel the precise pain until the following morning because he had a general discomfort from a prior back injury, and he so advised his Foreman at 4:00 p.m. on the following day, because he had missed him in the morning.

There is no question that the Carrier has the right to require that prompt reports be made concerning personal injuries for a number of reasons, which we need not elaborate upon at this time. At the same time, each failure to submit a report must be viewed upon its own particular merits, and our review of this record suggests to us that the Employee's failure to comply with the rule was more of a careless oversight than a deliberate attempt to evade the rules and regulations of the Carrier.

To be sure, this Employee has sustained a number of injuries and we can reasonably recognize that there could be a legitimate difference of opinion as to whether or not the Employee's services should have been terminated under the circumstances. However, inasmuch as the record does indicate that the Employee notified his Foreman on the next day, we are inclined to find that the penalty of dismissal is too severe under the circumstances, and we will restore the Grievant to duty, but without back pay.

The Claimant should recognize that any repetition of this type of activity will subject him to severe action by the Carrier.

FINDINGS

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

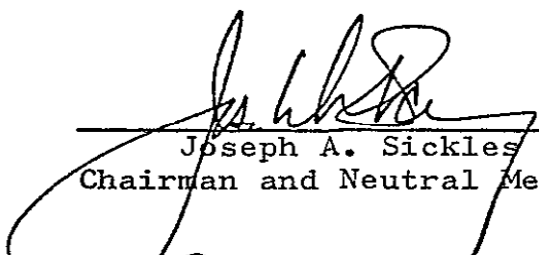
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

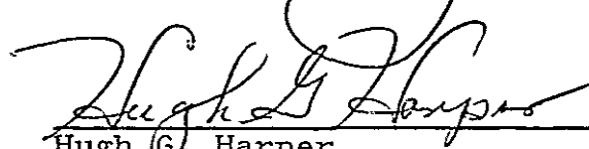
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

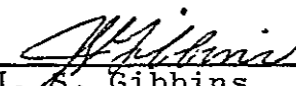
1. The termination is set aside.
2. The Claimant shall be restored to service with retention of seniority and other rights, but without reimbursement for compensation lost during the period of the suspension.
3. Carrier shall comply with this Award within thirty (30) days of the effective date.



Joseph A. Sickles
Chairman and Neutral Member



Hugh G. Harper
Organization Member



J. S. Gibbins
Carrier Member



DATE