

PUBLIC LAW BOARD NO. 2366

DOCKET NO. 50

AWARD NO. 38

PARTIES TO DISPUTE:

Illinois Central Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) The dismissal of R. P. Jackson for allegedly being absent without proper authority on May 15, 1981, was without just and sufficient cause and excessive..."
- (2) Claimant R. P. Jackson shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF BOARD

The Claimant and other individuals were notified of an Investigation concerning asserted desertion from assignment, falsification of payroll for the gang, failure to protect assignment, etc.

Subsequent to the Investigation the Claimant was dismissed from service because of absence from assignment without proper permission on May 15, 1981.

The Claimant was the Gang Foreman with six (6) Employees in his gang and the gang was assigned work at certain locations on May 14 and 15, 1981. On the 15th of May the entire gang failed to appear for work at the appointed place. When the General Foreman contacted the Claimant at home that day the Claimant stated that neither he nor his gang would be at work on the day in question but he gave no reason for that statement.

The Carrier asserts that the facts of record show that the Claimant did not appear for work on the 15th of May and that he did not receive permission to lay off from his Supervisor nor did he offer a legitimate reason for the absence and, the Carrier asserts that other issues raised by the Union

are not pertinent to a decision in that regard.

At the Investigation, the Claimant admitted that he received a telephone call from a Supervisor and that he stated that he was going to visit a doctor the following day and that the other men in the gang had said they wouldn't be working because of personal matters. He conceded that he did not receive any permission to be off on May 15. He did testify however at the hearing that he knew that he was responsible for the Employees under him but he could not get in contact with the appropriate Company official and that he did tell someone that he wouldn't be at work and that individual (Section Foreman) was supposed to advise the appropriate Supervisor.

The General Foreman, was aware that the Claimant had told another Foreman that the Claimant and his men would not report to work on Friday morning.

Our review of the transcript leads us to believe that there was certain confusion concerning this incident. Certainly we do not condone the actions of the Claimant in his rather cavalier treatment of attendance at work on the 15th however there is an indication that he attempted to make appropriate individuals aware of the circumstances although we freely concede that the attempt was not all that was required under the circumstances.

We are aware of the rather poor prior disciplinary record of this Claimant and we have contemplated the amount of punishment in light of that. However, because of the potential confusion involved we are inclined to restore the Claimant to service but without back pay.

FINDINGS

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

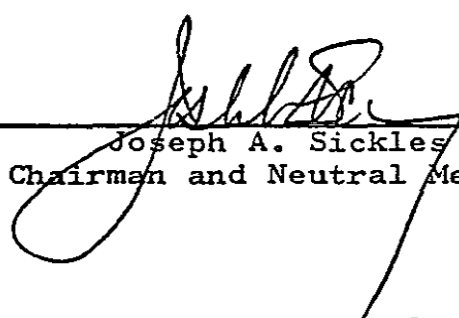
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

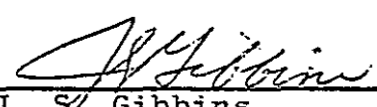
The parties to said dispute were given due and proper notice of hearing thereon.

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 any 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



J. S. Gibbins
Carrier Member



Hugh G. Harper
Organization Member

11-17-82

DATE