

PUBLIC LAW BOARD NO. 2366

DOCKET NO. 51

AWARD NO. 39

PARTIES TO DISPUTE:

Illinois Central Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) The dismissal of A. L. Price for alleged insubordination was without just and sufficient cause and excessive...
- (2) Claimant A. L. Price shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF BOARD

The Claimant was notified of an Investigation concerning an asserted insubordination.

On the day in question the Claimant left his work place, assertedly to obtain some drinking water but was gone an inordinate period of time which slowed down the work of the rest of the gang. When he was asked as to where he had been, according to the Carrier he became enraged and used certain vulgar language toward the Foreman who removed him from service pending the Investigation.

The Foreman contended that the insubordination resulted from the failure to advise the Foreman beforehand that he was going to be absent from his duties temporarily (so that a replacement could be used) and the use of profane language. The Carrier presented a witness who overheard the confrontation and he generally confirmed the testimony of the Foreman.

The Claimant insists that there was "bad blood" between himself and the Foreman and otherwise the incident would have amounted to nothing more than a relatively insignificant exchange of words. Further, the Claimant insists that the terminology used by him is a commonly accepted phrase used on the property and as such it amounts to no more than shop talk

which does not constitute insubordination and, in any event, the discipline imposed was excessive.

We have viewed the record as a whole and have little difficulty in concluding that in fact the Claimant was acting improperly when he left for a "drink of water" and stayed an inordinate period of time and we feel that his verbal abuse and physical actions amounted to an insubordination on his part when he was confronted by the Foreman. Nonetheless we question that under the entire record it was appropriate to dismiss the Claimant from service.

Of course, we do not, in any manner, condone insubordination however we feel that the words used in this type of a setting are certainly not as inappropriate as in other circumstances such as the circumstance confronted in Case No. 47 of this Board (Award No. 35 - issued this date).

We will restore the Claimant to service, but without back pay.

FINDINGS

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

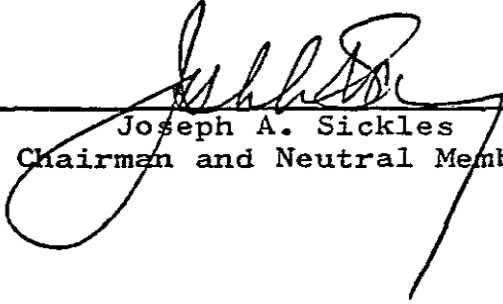
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

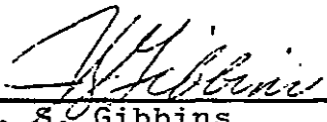
The parties to said dispute were given due and proper notice of hearing thereon.

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