

PUBLIC LAW BOARD NO. 2366

AWARD NO. 41

DOCKET NO. 53

BMW NO. K-227-T-81

ICG NO. 1469

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

"That Mr. J. I. Elliott be reinstated with all rights unimpaired and paid for each day he missed because he was dismissed."

OPINION OF BOARD

The Claimant was notified of an Investigation concerning an asserted false accident report. Subsequent to the Investigation he was terminated from service.

In August of 1980 the Claimant sustained an injury to his left hand which he described as having occurred when he and a co-worker were putting a wedge in. According to the Claimant he was holding the spike and when the co-worker capped it to make a groove, somehow "it hit my hand."

The co-worker (Rogers) confirmed the Claimant's version of the events in a statement given to an Investigator for a private law firm but, some ten (10) months later, Rogers signed a statement indicating that the Claimant here had intentionally placed his hand in the way of the maul in order to collect certain money from the Carrier.

In support of his conclusion that the Claimant deliberately sustained an injury, Rogers testified that earlier in the week of the event, the Claimant had stated that he wanted to "break his hand for some money."

At the hearing the Claimant steadfastly denied that he

had deliberately injured himself so as to obtain a monetary settlement and seriously questioned the intelligence of anyone who would do so. As to any possible motive concerning the change in Rogers' testimony, the Claimant makes certain reference to the fact that money may have been due and owing from one to the other.

The Board has read and re-read this record at length in an effort to reduce certain of the issues to the most basic aspects.

Certainly this author has no difficulty with the concept that it is not incumbent upon a Board such as this to substitute its judgment for that of a Carrier in a discharge and/or disciplinary case or to attempt to make credibility determinations after the fact. However, we do retain the jurisdiction to review the record to assure that there is evidence to substantiate the Carrier's conclusion. Here, we have a statement from Rogers some ten (10) months before the Investigation which substantiated the Claimant's version of the accident. Ten (10) months later he changes his story and relates a different version of the events and the Carrier's Hearing Officer chose to accept the altered version for reasons which are not readily apparent to this Board. Certainly, both sides may ask numerous rhetorical questions as to why an individual would deliberately allow himself to be hurt and why an individual would change his testimony at a later time, etc.; but those rhetorical questions do not resolve the issues before us.

We are of the view that there is not substantial evidence in this record to substantiate the charge and we have no alternative but to sustain the claim.

FINDINGS

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

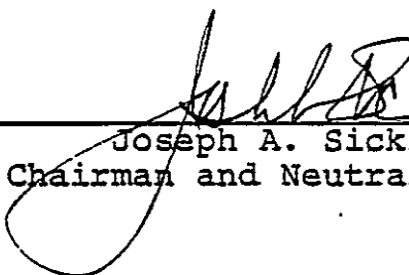
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.


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

AWARD


1. Claim sustained.
2. Carrier shall comply with this Award within thirty (30) days of the effective date hereof.



Joseph A. Sickles
Chairman and Neutral Member



J. S. Gibbins
Carrier Member



Hugh G. Harper
Organization Member

April 19, 1983
DATE