

PUBLIC LAW BOARD NO. 2366

AWARD NO. 50

DOCKET 64

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM

- "(1) The dismissal of Trackman C. L. Dorsey for allegedly falsifying a Personal Injury Report, Form 475, was without just and sufficient cause. (Organization's File Mi-265-T-82; Carrier's File 1511)
- (2) Trackman C. L. Dorsey shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF BOARD

On December 16, 1983 the Claimant was instructed to attend a formal investigation concerning an allegation that he had left the property without reporting an alleged injury and that he had falsified the injury report.

Subsequent to the investigation the Carrier determined that the Employee did in fact, leave the property without reporting an alleged injury and that he falsified his Personal Injury Report. The Employee was dismissed from service of Carrier.

The Organization has raised a procedural question concerning the Carrier's Submission.

Circular No. 1 of the National Railroad Adjustment Board states that all submissions must be signed by the party submitting same. The Carrier's submission to the Board in this case contains a typed name but there is no indication that any pertinent copy was physically signed in hand by a Carrier Official. Thus, according to the Organization, the submission cannot now be considered. In support of its contention the Organization cites Third Division 23170 and 23283.

Award No. 23283 comments upon the mandatory provisions of Circular No. 1 however that award decided that dispute on its merits. However, Award No. 23170 did consider the same type of

an objection presented to us in this case. Because the submission in that case did not contain a "signature" the claim was sustained. However, in the Award the Third Division specifically noted the definition of "signature" as contained in Black's Law Dictionary. The definition cited by the Division specifies that a "signature" may be "...written by hand, printed, stamped, type written, engraved, photographed...". It is not apparent, from a reading of Award No. 23170, whether or not there was a type written "signature" on the submission in question in that dispute however we must presume there was not based upon the fact that the Third Division cited, with approval, the definition of signature cited above.

Thus, we are inclined to agree with the Carrier in this case. The Carrier argues that the regulations applicable to the National Railroad Adjustment Board are not automatically applicable to this Public Law Board and in that regard the Carrier has cited the Agreement language which created this Board and notes that there is no requirement for a signature on the submission in that document. Moreover it refers to the same cited language contained in Award No. 23170 and it points out that the submission in this case did meet the requirement of the definition of "signature" adopted in that case.

Without immediate regard to the question of whether NRAB requirements apply here, we are of the view that the physical form of page fourteen (14) of the Carrier's Submission does satisfy the test contained in the Award cited by the Organization.

Concerning the merits of the case, once again we note a credibility dispute.

There is evidence of record to suggest that this employee was not injured and that a point in time he made reference to injuries and that he did depart without the necessary notifications and that his report was not factually accurate.

It has long been determined that in disputes such as this there is no authority for the Board to substitute its judgment for that of the Carrier concerning factual matters and as long as there is evidence of record to support the Carrier's conclusion - even though the employee presents a contrary version - we are powerless to overturn the Award because to do so would require making our own credibility findings and determinations.

FINDINGS

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

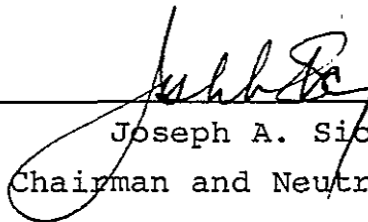
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

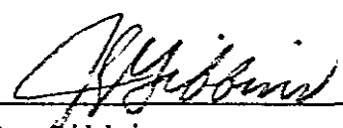
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

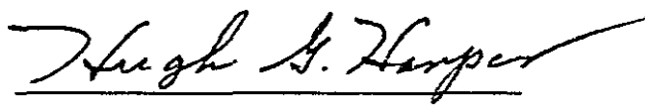
Claim denied.



Joseph A. Sickles
Chairman and Neutral Member



J. S. Gibbins
Carrier Member



Hugh G. Harper
Organization Member



DATE