

PUBLIC LAW BOARD NO. 2366

AWARD NO. 56

DOCKET NO. 70

ORGANIZATION FILE NO. N-3-T-82

CARRIER FILE: 1545

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad

and

Brotherhood of Maintenance of Way
Employees

STATEMENT OF CLAIM

"(1) The dismissal of Trackmen E. Walton, T. E. Mitchell and A. Taylor for allegedly refusing to work in the rain on October 19, 1982 was without just and sufficient cause and excessive. [Organization File N-3-T-82; Carrier File 1545].

(2) Claimants E. Walton, T.E. Mitchell and A. Taylor shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF THE BOARD

The Claimants were advised of a full investigation to determine whether or not they had protected their assignment on October 19, 1982.

Subsequent to the investigation each Claimant was dismissed from service.

The record shows that the Claimants reported for duty at 7:30 A.M. on October 19, 1982, and that they worked until 9:00 A.M. and then decided not to work any further because it was raining.

In its submission to the Board, the Organization concedes that the Employees ceased work, but it contends that the Claimants were not defiant but feared for their own safety because "...they were already wet and worried about their safety due to the lightning." Accordingly, the Employees argue that "...the supreme penalty of dismissal represents excessive punishment." The severity of the discipline is emphasized, according to the Employees, by the fact that the Claimants each had good work records.

The Carrier asserts that the Claimants took shelter from the rain while everyone else was working. They were ordered to return to work on more than one occasion, and they were told at one point that if they did not work they would be considered as having "quit." Thus, the Carrier argues that the issue is "...whether or not the Company proved that the Claimants failed to protect their assignments when they walked off their jobs."

The Board, after review of the record, finds that the Employees improperly ceased work on the day in question and severe disciplinary action was warranted. Although they raised some issue of safety, the record does not substantiate their contentions, and we cannot fault the Carrier's determination to take disciplinary action. We question, however, under all the facts and circumstances, that total discharge from the Company was the appropriate remedy.

Being mindful that it is not incumbent upon a Board such as this to substitute its judgment for that of the Carrier, unless said judgment is arbitrary and capricious, nonetheless it is incumbent on us to determine that the amount of discipline imposed is justified by the offense.

Unquestionably it was raining on the day of the incident, and we have noted a reference to the prior rule which permitted the Employees to make their own determination as to whether or not they desired working in this type of a situation. In addition, the records of the employees do not indicate that they were habitual disciplinary problems. We must, however, impose a significant penalty so as to impress upon these individuals the fact that they may not substitute their judgment for that of the Carrier in matters such as this, and that they must work even though the conditions may be distasteful, especially when fellow employees are working. Accordingly, we will restore the Employees to active service, but we will not order any backpay.

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.

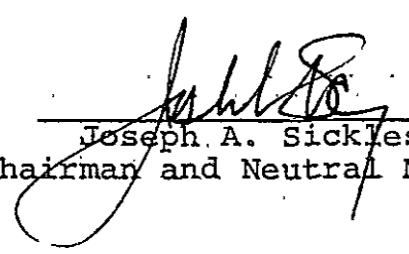
This Board has jurisdiction over the dispute involved herein.

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


AWARD

1. The terminations are set aside.


2. The Claimants will be restored to service with retention of seniority and other rights but without reimbursement for compensation lost during the period of the suspension.



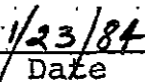
Joseph A. Sickles
Chairman and Neutral Member



J. S. Gibbins
Carrier Member



Hugh G. Harper
Organization Member



Date