

PUBLIC LAW BOARD NO. 2366

AWARD NO. 60

DOCKET NO. 76

ORGANIZATION FILE NO. MW-2-T-82

CARRIER FILE NO. 1544

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad

and

Brotherhood of Maintenance of
Way Employees

STATEMENT OF CLAIM

"(1) The thirty (30) day suspension assessed R. J. Smith for allegedly leaving Carrier's property without proper authority was without just and sufficient cause and on the basis of unproven charges.

(2) Claimant R. J. Smith shall be compensated for all wage loss suffered."

OPINION OF THE BOARD

The Claimant was charged with leaving the property without authority and, subsequent to an investigation, he was assessed a thirty-day suspension.

The Carrier presented testimony that on the day in question the Claimant stated that he did not want to work the rest of the day because he was hot, and, without permission, he left the job. Carrier witnesses deny that the Claimant made any reference to being sick on the day in question. Moreover, it was testified that if they had reason to believe that the Employee was sick, different considerations would have been raised.

The Carrier defends the severity of the suspension by showing the Employee's prior disciplinary record, which shows that this is not the first instance where the Employee's attendance has been suspect.

The Employee contends that he left because he was physically sick, and that he had advised the Supervisor's of his condition.

Certainly this Board would not require an employee to continue work if he were physically ill. But, obviously, the employee must make that condition known to the Carrier. Here, there is a sharp credibility dispute in that regard.

For countless years the Referees for the railroad industry have followed the rule that it is not incumbent for a Board such as this to make credibility determinations because, in point of fact, we are not present to hear the evidence, observe the witnesses, etc. Rather, we are obligated to accept the credibility findings of the Carrier unless there is a clear showing that those findings were not based upon credible evidence. No such showing appears here, and we have absolutely no recourse but to accept the Carrier's credibility determinations and find that the Employee did not advise the Carrier's Supervisors that he was sick.

Based on the past record of the Employee, we are hesitant to disturb the discipline imposed and, accordingly, we will deny the claim.

FINDINGS

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

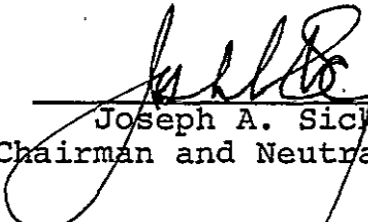
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.


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

AWARD


Claim denied.



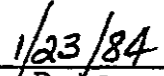
Joseph A. Sickles
Chairman and Neutral Member



J. S. Gibbins
Carrier Member



Hugh G. Harper
Organization Member



Date