

PUBLIC LAW BOARD No. 2366

AWARD No. 81

DOCKET No. 97

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM

Claim on behalf of Trackman Harold Sykes to be returned to service with all rights unimpaired and to be paid for each day he is forced to miss as a result of being dismissed following an investigation held on June 12, 1984.

OPINION OF THE BOARD

The Claimant was notified of an investigation for allegedly striking a Foreman in the face and being otherwise insubordinant. Subsequent to the investigation he was dismissed from service. The record demonstrates that there was certain conflict between the Claimant and his Foreman concerning his status on June 4, 1984. The Claimant made some unfortunate remarks to a Supervisor concerning Foreman Johnson and the Claimant was warned to desist from further derogatory comments and threats. When Johnson joined the Supervisor and the Claimant in discussion, further conversation was conducted concerning the preceding day, at which time, according to Johnson, the Claimant swung at the Foreman, hitting him on the left cheek. In addition, the Claimant threw a rock at the Foreman and the Foreman narrowly missed falling off of the railroad. The Supervisor was not present during the immediately above described events but another Trackman (Ghrist) witnessed the event.

In addition to the testimony of the Foreman, Trackman Ghrist testified and confirmed that the Claimant swung at Johnson on the left side of Johnson's head. He also referred to the fact that the Claimant swung at Johnson a second time. Ghrist also

observed the rock throwing incident and he testified that the Claimant had subsequent discussions with him in which he recognized the severity of his conduct. During the investigation the Claimant denied guilt but conceded that some potentially menacing comments were made. Although the Claimant indicated that the Foreman was the instigator, he did concede that he swung his fist at him although he indicates that it is possible that the Foreman scratched his own face in an effort to make it appear that he had been assaulted. Moreover, he testified that his frustration caused him to throw a rock at the track which may have bounced toward the Foreman.

Boards such as this are precluded from making credibility determinations in conflict with those reached by the individuals who took the testimony. Here, not only did the Foreman testify but a Trackman confirmed that testimony, and a Supervisor indicated the general frame of mind of the Claimant immediately prior to the incident. In contradiction to that testimony, the Claimant states that the Supervisor may have been the aggressor and that he probably scratched his own face. There is absolutely no evidence of record that would warrant us to attempt to substitute our judgment for that of the Carrier in this case and we have no alternative but to deny the claim.

FINDINGS

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

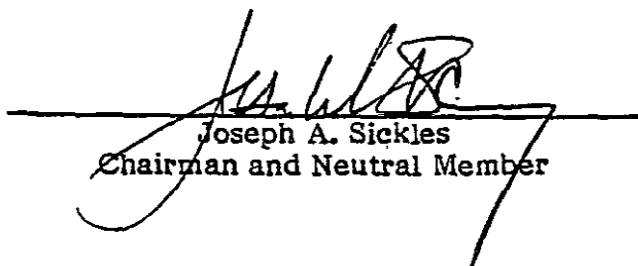
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

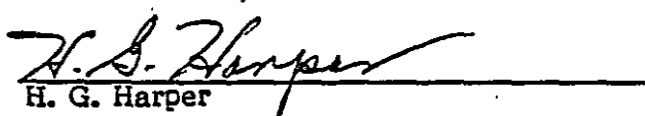
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

1. Claim denied.


Joseph A. Sickles
Chairman and Neutral Member


J. S. Gibbins
Carrier Member


H. G. Harper
Organization Member

September 30, 1985
Date