

NATIONAL MEDIATION BOARD
Public Law Board
No. 3063

AWARD NO. 2

PARTIES TO THE DISPUTE:

The Pittsburgh & Lake Erie Railroad and)
The Lake Erie & Eastern Railroad Companies.)

vs)

Case No. 3.)

The Brotherhood of Maintenance of)
Way Employes.)

STATEMENT OF CLAIM:

Claim on behalf of B&B Carpenter A. J. Gray that the discipline in the favor of thirty (30) working days actual suspension as a result of hearing held at Pittsburgh, Pa., May 28, 1980 be removed from his record and that he be paid for all monetary losses sustained.

OPINION OF THE BOARD:

Mr. A. J. Gray, the Claimant, entered the service of the Carrier on September 9, 1974, and was employed as a Carpenter in the Carrier's Bridge and Building Department at McKees Rocks, Pa. On April 28, 1980, along with two other employees, E. H. Altmeyer and A. Bahney, was assigned, with hours from 7:30 A.M. to 4:00 P.M., with an assigned lunch period from 12:00 Noon to 12:30 P.M., to install canvas curtains around an area used for the spray painting of locomotives within the confines of Carrier's Diesel Repair Shop facility at McKees Rocks. The project involved working on scaffolding approximately 40 feet off the ground. About 3:00 P.M. Maintenance and Construction Engineer J. J. Sturman and Supervisor of Bridges & Buildings J. R. Bednar arrived at the work site to inspect the progress of the curtain installation when they found Claimant and employee Bahney missing from the work site. Employee Altmeyer was found asleep. The curtain installation was not completed and the new canvas was found

on the floor.

About 3:30 P.M. Claimant Gray was sighted some distance from the property and was approached by Mr. Sturman. Claimant Gray admitted that he did not have permission to leave the work site and that he had been visiting a friend.

Separate charges were filed against employee Altmeyer and none were filed against Bahney as he had stated that he was in the men's room and had no knowledge of the incident.

On May 1, 1980, Claimant Gray was charged with absenting himself from duty without permission and ordered to attend an investigation on May 19, 1980, to determine his responsibility. After an agreed upon postponement the investigation was held on May 28, 1980. A copy of the transcript was made a part of the record. A careful reading of the transcript indicates Claimant was given a fair and impartial hearing. He was represented by three officers of his Organization, including his General Chairman, he was given the opportunity to produce witnesses in his behalf, but chose not to, and he and his representatives were given full opportunity to examine and cross-examine Carrier's witnesses, which they did extensively.

On June 16, 1980, the Carrier, after finding Claimant guilty of the charges, formally suspended him for a total of thirty (30) work days without pay, for violation of Rule J-1 of the Carrier's General Rules.

Rule J-1 reads as follows:

"Employees will not absent themselves from duty without proper authority."

The record clearly shows Claimant left his work site and absented himself from duty and was off the property for at least 30 minutes without authority. The transcript shows Claimant

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testifying to this violation of the rule.

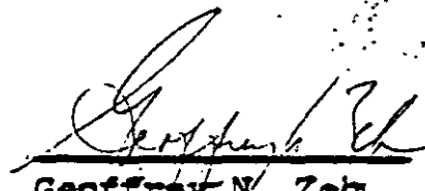
In defense, Claimant and his representatives, argue that there were diesel fumes present in the area of the work location 40 feet above the ground and they were becoming nauseated and removed themselves from the scaffolding. Claimant Gray, in the investigation said he needed fresh air and took a walk. It should be noted that he first told his supervisors when accosted off the property that he was visiting a friend. At the investigation he changed his story to indicate that he went for cigarettes and a 'pop'. It should also be noted that the argument that they were subject to becoming overcome by diesel fumes was first raised in the investigation. The supervisors who found Claimant and the others away from their work location were not informed of the alleged problem with diesel fumes. Additionally, Carrier maintains a medical facility in the proximity of the work location and Claimant Gray had to pass the medical facility on his way up town. It seems obvious to this Board that an individual nauseated by diesel fumes would have reported this to his supervisors and reported to the nurse who was on duty at the medical facility.

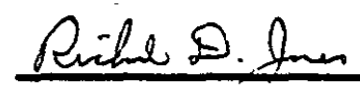
The Carrier has proved its case and this Board can find no basis for disturbing the discipline imposed.

FINDINGS: That the Agreement was not violated.

AWARD: Claim denied.


A. Robert Lowry
Chairman & Neutral


Geoffrey N. Zeln
Labor Member


Richard D. Jones
Carrier Member

May 14, 1982.