

PUBLIC LAW BOARD - NO. 3514

Case 45

Award 45

PARTIES Consolidated Rail Brotherhood of Maintenance
 to Corporation and of Way Employes
DISPUTE:

STATEMENT OF CLAIM: That Trackman R. Polite was unjustly dismissed from the service of the Carrier, and that he be reinstated to service with seniority rights and other benefits restored and with compensation for all lost time while out of the service.

FINDINGS: Subsequent to an investigation, the Claimant was found guilty of failure to report for duty on December 11, 1980. The Carrier then considered the Claimant's past record, which included a series of unauthorized absences, and concluded that dismissal of the Claimant was warranted.

The Claimant was on furlough and did not appear at the hearing, although the record shows that he was notified with respect to the charge and date of hearing. The Organization's representative at the hearing requested a postponement of the hearing until the Claimant returned to work from his furlough status.

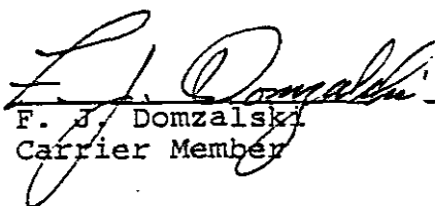
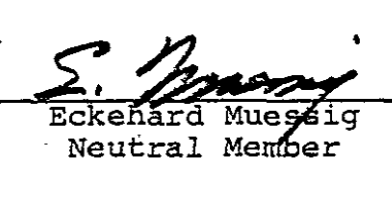
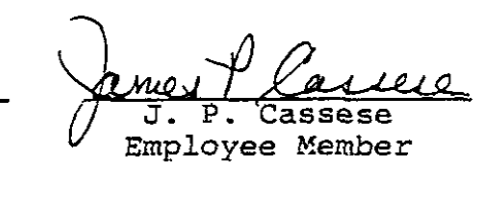
The Board, while it generally does not consider investigative proceedings in which the Claimant does not participate to fully serve the parties' best interests, nonetheless finds under the circumstances here that the Claimant's due process rights were not

violated. He was put on proper notice of the charges and date of hearing, and his failure to appear at the hearing was of his choosing and at his own peril.

With respect to the substantive matter under dispute, the evidence is conclusive that the Claimant did not properly protect his assignment on December 11, 1980. Accordingly, given the Claimant's past attendance record, which was not a good one under any reasonable standard, the Carrier's action cannot be considered arbitrary or capricious.

AWARD

The claim is denied.

		
F. J. Domzalski Carrier Member	Eckenhard Muesig Neutral Member	J. P. Cassese Employee Member

APR 11 1985