

PUBLIC LAW BOARD NO. 3514

Case No. 92

Award No. 76

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

STATEMENT OF CLAIM: That the personnel record of Welder Helper, John A. Battista, be cleared and that he be restored to the service.

FINDINGS: This dispute essentially came about because the Claimant was engaged in outside employment. Specifically, the Carrier found that the Claimant gave false testimony with respect to how he spent his time while off duty because of an injury sustained on the Carrier's property. It then also found that the Claimant left his place of duty prior to the end of his scheduled tour without proper authority to do so and gave false testimony later at a hearing on this aspect of the dispute.

The Organization raised, and vigorously pursued, a number of contentions alleging that the Carrier erred both procedurally and substantively with respect to the claim.

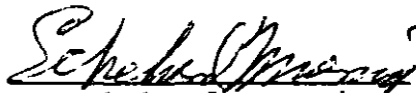
We have carefully analyzed the transcript of the investigation, as well as the arguments and key issues progressed by the parties. From this review, we find the Organization's contentions not without merit, given the facts of record. However, it is our finding that the Carrier did not misuse its discretion in this matter. Undoubtedly, there were other courses of action that could have been


legitimately considered by the Carrier, short of dismissal, given the various aspects and ramifications of this dispute. However, it is not incumbent upon us to substitute our judgment for that of the Carrier if there is evidence to support the finding of guilt. We find such evidence here.

AWARD

The claim is denied.


F. J. Domzalski
Carrier Member


Eckehard Muessig
Neutral Member


J. P. Cassese
Employee Member

Dated: AUG 20 1985