

PUBLIC LAW BOARD NO. 3542

Parties
to the
Dispute

:
: Pennsylvania Federation Brotherhood of
: Maintenance of Way Employees
:
: vs.
:
: Consolidated Rail Corporation
:
:

Case No. 3
Award No. 3

STATEMENT OF CLAIM

- (a) That Daniel C. Sequin, Bridge and Building Inspector, employed at Canton Yard, Baltimore, Maryland, be restored to service with all seniority rights and all other privileges provided for by either agreement or past practice.
- (b) That Daniel C. Sequin's record be cleared of all charges brought against him.

OPINION OF THE BOARD

Claimant D. C. Sequin is a Bridge and Building Inspector employed at Carrier's Canton Yard, Baltimore, Maryland. On February 2, 1982, Claimant was charged as follows:

Being absent from your assigned work location as B&B Inspector on the I-95 project at Canton Yard, Baltimore, MD at approximately 10:00 AM on December 29, 1981.

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Engaging in unauthorized activity at Canton Yard, Baltimore, MD at approximately 10:00 AM on December 29, 1981, in that you were observed on a wooden telephone type pole.

Falsifying Conrail Form AD2306 R5 11076, DAILY PARTICIPATION PROJECT REPORT, dated December 29, 1981.

A hearing into the matter was held on February 17, 1982, as scheduled. At the conclusion of that hearing, Claimant was found guilty as charged and dismissed from Carrier's service. A transcript of that hearing has been made a part of the record of this case.

The Board has reviewed that transcript as well as the other documents that make up the record of this case and it must conclude that Claimant's dismissal was not for proper cause and was not supported by the hearing record. Consequently, Carrier acted arbitrarily and capriciously and the dismissal should be set aside.

Claimant in this case is a Bridge and Building Inspector who was assigned to work with a Contractor and to make sure that Carrier's interests were considered when the Contractor's work might interfere with Carrier's mission. On some days, Claimant's work load was such that he had little or nothing to do. The record reveals that on these days, he was cutting down abandoned telephone poles and reclaiming the copper wire strung on those poles.

Carrier contends that Claimant admitted the charges against him

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and that the penalty of dismissal is therefore appropriate. This Board is not persuaded, however, that Claimant was engaged in illegal acts when cited on December 29, and 30, 1981.

A careful reading of the transcript should persuade any unbiased observer that the Project Director was fully aware of the way Claimant worked and knew what he was doing with the telephone poles and the copper wire. Claimant's story, as well as that of witness Nelson, is believable. A careful analysis of the Director's testimony also points up the fact that he was aware of what Claimant was doing.

This Board is persuaded that Claimant was the scapegoat in this situation, that he was performing his duties in a competent manner, and that his Supervisor was fully aware of what he was doing--and condoned it. The Supervisor's testimony at the hearing was self-serving, evasive, not responsive on occasion, and clearly designed to protect his own position.

Carrier has acted in an arbitrary and capricious manner in this instance and this claim should be sustained.

AWARD

The claim is sustained. Carrier is directed to reinstate Claimant to his former position with pay for all lost time in accordance with Rule 27. Carrier shall implement this award within 30 days of its adoption.

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R. E. Dennis 9/20/84
R. E. Dennis, Neutral Member

J. Dodd
J. Dodd, Employee Member

R. O'Neil
R. O'Neil, Carrier Member