PUBLIC LAW BOARD NO. 3542

Parties to the Dispute	Pennsylvania Federation Brotherhood of Maintenance of Way Employes vs. Consolidated Rail Corporation	Case No. 5 Award No. 5

STATEMENT OF CLAIM

(a) That Charles D. Smith, Track Foreman, employed by the railroad for seventeen (17) years, be restored to the service with seniority rights and all other privileges provided for by either agreement or past practice. That he be compensated for all time lost until such time he is returned to the service of the railroad.

(b) That Charles D. Smith's record be cleared of all charges brought against him.

OPINION OF THE BOARD

Claimant C. D. Smith is a Track Foreman employed by Carrier at Canton, Head of Yard, Baltimore, Maryland. On October 1, 1981, while off duty, Claimant was involved in an incident with a woman on or near Company property that led to his arrest and to an eventual plea of guilty to a charge of assault with intent to rape.

Claimant was sentenced to five years in the Department of Corrections--one year in jail and four years' probation in a drug and alcohol program.

Carrier charged Claimant at that point with the following:

> Pleading guilty to a charge of assault with intent to rape, in Baltimore County Criminal Court of February 3, 1982, as a result of an occurrence on Company property, Sparrows Point Branch, Baltimore County, Maryland, at approximately 3:30 a.m. on October 1, 1981.

A hearing into the matter was held on March 10, 1982. As a result of that hearing, Claimant was found guilty. Based on his guilt as charged and his past discipline record, he was dismissed from Carrier's service.

Petitioner contends that Claimant was not on Company property when the incident occurred and that his plea was not an admission of guilt. It also contends that Carrier did not charge Claimant within the 30 days required by contract.

Carrier contends it followed all procedures required of it by contract and that Claimant's discharge should be upheld.

This Board has carefully reviewed the record of this case and must conclude that Claimant is guilty as charged, and that this incident standing alone is sufficient grounds on which to terminate an employe. When it is viewed in light of Claimant's past discipline record, two previous dismissals (restored to service on a leniency basis) and four previous suspensions (one

for five days, two for ten days, and one for 20 days), it is very clear that Claimant is a troublesome employe who has been given every chance possible. This Board can not, based on any acceptable arbitral standard, give Claimant another.

AWARD

The claim is denied.

R. E. Dennis, Neutral Member

J. J. Dodd, Employe Member

R. O'Neil, Carrier Member