

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5495

JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
J. S. GIBBINS, CARRIER MEMBER
R. A. LAU, ORGANIZATION MEMBER

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES

and

ILLINOIS CENTRAL RAILROAD

Award No. 2
Case No. 2

Hearing Date - December 2, 1994
Date of Decision - January 25, 1995

Statement of Claim:

Claim of the System Committee of the Brotherhood that:

- 1) The dismissal of Trackman Wendell Golston was without just and sufficient cause and in violation of the Agreement. (Organization File - Case No. 240 MofW; Carrier File 134-296-3 Spl.)
- 2) Trackman Wendell Golston shall now be reinstated to service and he shall be made whole in accordance with Rule 33(I) of the Agreement.

FINDINGS:

Public Law Board No. 5495, upon the whole record and all of the evidence, finds and holds that the Employee(s) and Carrier(s) are employee and carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute(s) herein and that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

On July 21, 1994, Trackman Wendell Golston was cited to attend an investigation on a charge that he had provided false and/or misleading information regarding the extent of a an injury sustained on June 1, 1994, and that on June 23, 1994 he made unauthorized use of Carrier's credit when he obtained certain medical services. At the investigation held on August 19, 1994, Mr. Golston was determined to be guilty of the false and misleading information charge, but was determined to be not guilty of the charge concerning use of Carrier's credit to obtain medical services. The discipline assessed on the false and misleading information charge was dismissal.

The Board has reviewed the investigation transcript and concludes that while it has been established that Golston was duplicitous and misleading with respect to information concerning his physical abilities, Carrier's attempts to develop this conclusion at his investigation were not accomplished correctly. The transcript of the investigation is replete with instances where the questions asked by the Hearing Officer were leading and conclusionary, in actuality a manifestation of notions of preconceived guilt, as opposed to objectively developing the facts surrounding the charges. The Board acknowledges that railroad investigation hearings are not the same as criminal trials and that procedures applicable to criminal trials do not obtain. However, investigations must be conducted in a fashion that insures objectivity.

Further, the Board is concerned with the discipline assessed. Dismissal seems inappropriate in the circumstances. Accordingly, the Board will order that the dismissal be converted to a disciplinary suspension equal to the time Claimant has been out of service. Carrier is directed to request that Claimant present himself for a return to work physical, in accordance with its return to work practices, and if it is determined that Claimant is physically able to resume work as a trackman, then he shall be restored to service, with full seniority and fringe benefits, but without compensation for time lost.

AWARD

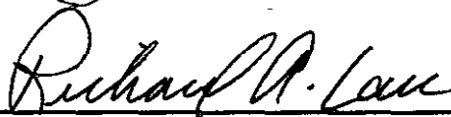
Claim sustained, as provided above.

ORDER

Carrier is ordered to comply with this Award and restore Wendell Golston to service, as provided above, within thirty days of the date indicated below.

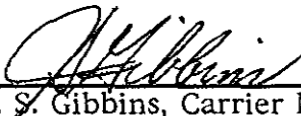


John C. Fletcher, Chairman & Neutral Member



R. A. Lau, Employee Member

I DISSENT:



J. S. Gibbins, Carrier Member

Dated at Mount Prospect, Illinois, January 5, 1995