

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5735**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
JOSEPH A. MARKASE, CARRIER MEMBER
D. D. BARTHOLOMAY, ORGANIZATION MEMBER**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

INDIANA HARBOR BELT RAILROAD COMPANY

Award No. 10
Case No. 10

*Date of Hearing - January 25, 1999
Date of Award - February 26, 1999*

Statement of Claim:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Mr. Justin Smith, for violation of Indiana Harbor Belt (IHB) General Rules D and L and his failure to comply with the March 13, 1998 written instructions was based on unproved charges and in violation of the Agreement. (Carrier's File MW-98-018.)
2. Mr. Justin Smith shall be reinstated and compensated for all wages, credits and benefits commencing March 11, 1998, and continuing until this matter is resolved.

FINDINGS:

Public Law Board No. 5735, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier 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.

Following an investigation (concluded on May 20, 1998) on three charges of misconduct, Claimant was issued discipline of dismissal. That discipline has been appealed to this Board on a variety of grounds. The Organization maintains that Claimant was not afforded a fair and impartial investigation, as required by Rule 25 of the Agreement. Particularly it faults the conduct of the hearing officer and the form of the questions asked. It also suggests that sequestration was breached and independent versions of the incidents being looked into were not made.

The Organization also argues that Carrier failed to prove the charges against Claimant. The allegation on the violation of Rule D, should fail because Carrier witnesses only stated that Claimant was merely upset, using loud language, but did not indicate any threats of violence. With regard to the alleged violation of Rule L, the Organization states that the evidence only indicates that the mechanic over-reacted to a perception that Grievant

was abusing the engine of his vehicle. And with regard to the allegation that Grievant failed to comply with instructions about contacting Carrier's counseling service, the Organization contends that Claimant did indeed comply.

The Board does not find the Organization's procedural or substantive arguments to be persuasive. There exist in this record insufficient evidence to demonstrate that any procedural violations exist so as to flaw the investigation.

Furthermore, ample evidence is available to show that the charges leveled against Claimant were accurate. Clearly, the transcript of the investigation demonstrates that Claimant engaged in several elements of misconduct that warrant discipline. Collectively these elements of proven misconduct warrant serious discipline. When they are considered in conjunction with Claimant's previous work record, which by any measure is below expected standards, discipline of dismissal is warranted. Simply stated, Carrier need not retain in its employ an individual that is quarrelsome, threatening, and is unwilling to follow lawful instructions. Moreover, Carrier need not retain in its employ an individual that is unwilling to recognize that he has a problem and is unwilling to secure help in coping with this problem. Accordingly the discipline assessed in this matter will not be disturbed.

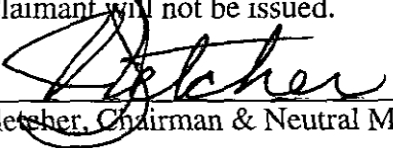
The grievance is without merit. It will be denied.

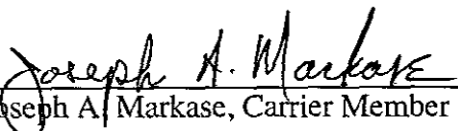
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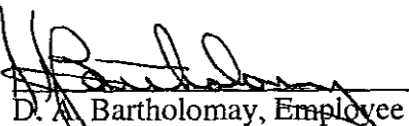
Claim denied.

O R D E R

An award favorable to Claimant will not be issued.


John C. Fletcher, Chairman & Neutral Member


Joseph A. Markase, Carrier Member


D. A. Bartholomay, Employee Member

Dated at Mt. Prospect, Illinois, February 26, 1999