

**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. 11

Case No. 11

Everardo Ortiz -Track Foreman

*Date of Hearing - August 23, 1999  
Date of Award -September 30, 1999*

**Statement of Claim:**

Claim of the System Committee of the Brotherhood that:

1. The eighteen (18) day suspension assessed Track Foreman Everardo Ortiz, for his alleged insubordination on November 25, 1998, was without just and sufficient cause, and based on an unproved charge. (Carrier's File MW 99-001)
2. Track Foreman Everardo Ortiz shall now be compensated for all wages, credits and benefits denied

**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.

On November 25, 1998, in a meeting in which Carrier's Assistant Track Supervisor, Mr. A. Bowen, was conducting a job briefing and safety session, for approximately forty Trackworkers from several track crews, the Organization's Local Chairman, Mr. Joe Franco, requested to talk to his members concerning the revised holiday provisions in the parties Collective Bargaining Agreement, so as to reduce or avoid any misunderstandings of the membership pertaining to holiday pay and work requirements in the upcoming holiday season. During Mr. Franco's discussion, Mr. Ortiz, the herein Grievant, repeatedly interrupted with profanity and personal challenges. Grievant was asked, by the Supervisor in charge of the meeting, to cease his disruptive conduct. He refused to do so, and was then ordered to leave the room. Subsequently, Grievant was suspended from service, and notified to attend an investigation on a charge of insubordination. Following the investigation, which was held on December 14, 1998, Grievant was disciplined with an eighteen day actual suspension. The ensuing grievance

filed on that suspension remained unresolved when handled on the property as provided in the parties Agreement, and was timely referred to this Board for review.

There is no actual dispute in this record that while the Organization's Local Chairman was, with the permission of Management, explaining the Agreement provisions pertaining to holiday pay and work, Grievant interrupted the explanation being given with challenges to the Local Chairman's authority. These interruptions were laced with gross profanity, and other inappropriate acquisitions. There is also no actual dispute in this record that Grievant refused to curtail his disruptive behavior when he was repeatedly instructed to do so by a Carrier Supervisor. Grievant's inappropriate conduct not only aborted the discussion on the holiday rule issue, but it also aborted the remainder of the job briefing and safety meeting as well. Management, because of the disruption, did not have sufficient time to discuss all of the rules it intended to review that day.

In the investigation, Grievant did not actually mount a defense that he was not disruptive and insubordinate, but instead, argued that a conspiracy existed to seek his discharge from Carrier on unfounded charges pertaining to this and other incidents.

From study of the record the Board must conclude that Grievant, when asked on at least four occasions to refrain from interrupting, did not do so. Even though a discussion on a holiday rule was being conducted by the Organization's Local Chairman, the discussion was authorized by Carrier. As such it was just as much a Carrier meeting as any other type of meeting, safety or job briefing. It was intended to provide harmony in the work place, and avoid grievances. No employee is privileged to disrupt such meetings, regardless of the reason, and regardless of the employee's sentiments. In the circumstances existing here, Claimant's continuing disruptive conduct, after being told repeatedly to cease by a Supervisor, is no less an act of insubordination than refusing to follow any other legitimate instructions. Accordingly, discipline was warranted. Discipline of 18 days suspension is not inappropriate in the circumstances of this case. The grievance is without merit. It will be denied.

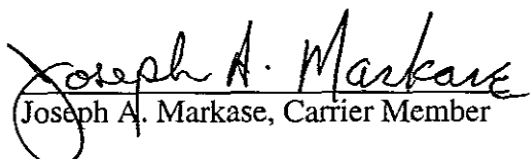
## A W A R D

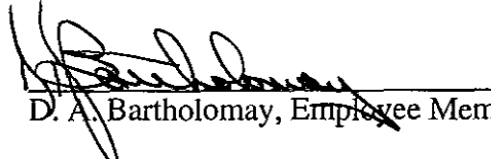
Claim denied.

## 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., September 30, 1999