

**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. 6  
Case No. 6

*Date of Hearing - October 6, 1997  
Date of Award - February 13, 1998*

**Statement of Claim:**

Claim of the System Committee of the Brotherhood that:

1. The five (5) day suspension assessed Foreman Kevin Harris for his alleged failure to correct a track defect which caused a derailment at 2:10 a.m., which resulted in a second derailment at 7:30 a.m. at the Ready Rip Track Switch on February 24, 1996, was without just and sufficient cause, based on an unproved charge, arbitrary and in violation of the Agreement. (Carrier's File MW-96-010.)
2. Foreman Kevin Harris shall now be exonerated of the charge and made whole for all lost wages, benefits and credits due to this wrongful suspension.

**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.

Claimant, Kevin Harris, has worked as a Foreman for seventeen of his 23 years service with Carrier. On March 4, 1996, he was cited to attend an investigation on a charge that he had failed to correct a track defect, while working as a Laborer at the site of a previous derailment, and this failure caused a second derailment. Following the investigation, Claimant was assessed discipline of a five day suspension.

The Organization has appealed this suspension on a variety of grounds. The Board fails to find merit in the contentions advances by the Organization. The evidence in this record is conclusive that Claimant did not perform his job correctly, resulting in a derailment at a location where he was expected to properly make a repair.

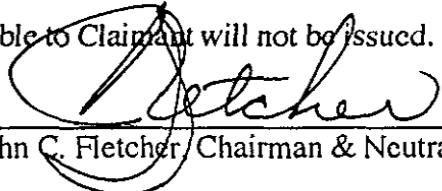
The grievance is without merit. It will be denied.

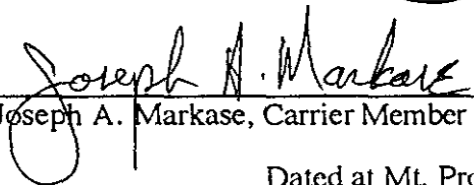
**A W A R D**

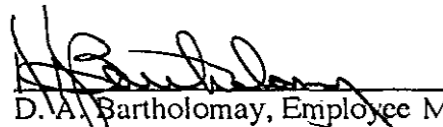
Claim denied.

**O R D E R**

An award favorable to Claimant will not be issued.

  
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John C. Fletcher, Chairman & Neutral Member

  
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Joseph A. Markase, Carrier Member

  
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D.A. Bartholomay, Employee Member

Dated at Mt. Prospect, Illinois, February 13, 1998