

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

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

MAR 1 1999

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

INDIANA HARBOR BELT RAILROAD COMPANY

Award No. 9
Case No. 9
Everardo Ortiz

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 five (5) day suspension imposed upon Machine Operator Everardo Ortiz for insubordination to his immediate supervisor in connection with his refusal to sign a Safety Efficiency Training ("SET") Form was excessive and based on unproved charges. (Carrier's File MW-98-021.)
2. Mr. Ortiz shall be compensated for the five (5) days he was wrongfully suspended and all references to this incident shall be removed from his record.

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 May 11, 1998, the herein Claimant, Mr. Everardo Ortiz, a machine operator, became involved in a discussion with his Supervisor concerning earplugs. Near the conclusion of that discussion Claimant's Supervisor presented him with a Safety Evaluation Training Form (SET) and directed that he sign it, as required by Carrier instructions. Claimant refused, even when told several times by the Supervisor that a refusal to sign the SET would be considered an act of insubordination.

When Claimant did not sign the SET he was removed from service and cited to attend an investigation on the ensuing insubordination charge. Following the investigation Claimant was disciplined with a five day suspension. The Organization has appealed the

suspension to this Board on a variety of grounds, but mainly it says that Claimant was willing to sign the SET, but did not do so because he did not have a pen and the Supervisor was unwilling to let him use his pen.

The Board is not persuaded that the Organization's defenses are valid and that the discipline assessed in this matter should be modified. Carrier employees are required to sign SET's when they are issued. The reason that an SET is being issued is irrelevant, signing the SET is an acknowledgment that it was issued, that is all. A refusal to sign an SET is an act of insubordination. If an employee disputes what is written on the SET an appropriate notation may be made, but he is not privileged to refuse to sign the form.

In this matter the record supports a conclusion that Claimant "flat-out" refused to sign the form even when requested to do so several times, at least once in the presence of witnesses. His conduct at time was insubordinate, and warrants discipline. Discipline of a five day suspension was not inappropriate in the circumstances in this record.

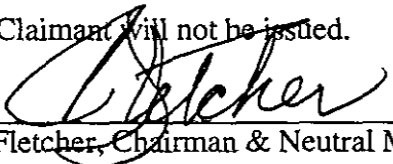
The grievance is without merit. It will be denied.

A W A R D

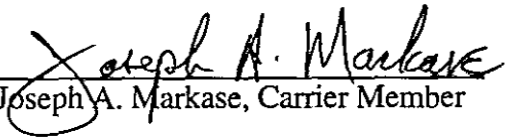
Claim denied.

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., February 26, 1999