

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

|                                             |   |             |
|---------------------------------------------|---|-------------|
| BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES | ) |             |
|                                             | ) | Case No. 1  |
| and                                         | ) |             |
|                                             | ) | Award No. 1 |
| ELGIN, JOLIET AND EASTERN RAILWAY COMPANY   | ) |             |
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Martin H. Malin, Chairman & Neutral Member  
D. D. Bartholomay, Organization Member  
J. F. Ingham, Carrier Member

Hearing Date: October 10, 1996

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it removed Painter Foreman J. T. Manstis from service without the benefit of a fair and impartial hearing pursuant to Rule 57 (Organization File SAC-6-95; Carrier File UM-9-95).
2. Painter Foreman J. T. Manstis shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Public Law Board No. 5905, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On March 10, 1995, Claimant was involved in an accident while operating a Carrier truck. Pursuant to notice, an investigation was held on March 21, 1995. Claimant was found to have been responsible for the accident and, in light of his past record, was dismissed from service. The

Organization filed a claim which was denied and then appealed. Carrier's highest officer in the chain of appeal granted Claimant reinstatement, on a leniency basis, conditioned, among other things, on Claimant's enrolling in a defensive driving course and furnishing proof of passing the course within sixty days of his return to work. On January 17, 1996, Carrier notified Claimant that, because he had failed to complete the defensive driving course within the prescribed time period, he was being returned to a dismissed status.

The Organization contends that Carrier violated Rule 57 by not providing Claimant with a hearing before dismissing him in January 1996. Carrier maintains that no hearing was required because Claimant failed to comply with a condition of his reinstatement. Thus, in Carrier's view, return to dismissed status was automatic.

The Board has reviewed the record developed on the property carefully. Carrier's offer of reinstatement stated clearly:

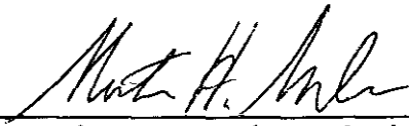
Strictly without precedent or prejudice, I am agreeable to removing the 30 demerits and reinstating Mr. Manstis on a leniency basis, with full seniority and all other rights unimpaired, but with no pay for time he has been out of service. This offer is conditional upon his enrollment in a defensive driving course. He must furnish proof of passing such a course within 60 calendar days after his return to work. He must also pass a standard return-to-work physical, including a drug screen.

Both Claimant and the General Chairman signed the offer, indicating their acceptance of it. By its own terms, Claimant's reinstatement was conditioned on his enrolling in a defensive driving course and furnishing proof of passing the course within sixty days of his return to work. Claimant failed to furnish such proof within the prescribed time period. Thus, one of the conditions for his reinstatement was not fulfilled. This was not a case of a new dismissal requiring a new hearing. Rule 57 was not violated.

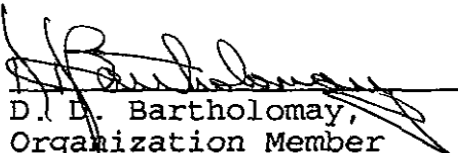
Carrier's offer of reinstatement clearly and unambiguously placed the responsibility for fulfilling the conditions on Claimant. Claimant signed the offer. If Claimant did not understand what was required of him, he should have inquired. Claimant, and Claimant alone is responsible for not fulfilling the conditions and for his return to a dismissed status.

## AWARD

Claim denied.

  
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Martin H. Malin, Chairman

  
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J. F. Ingham,  
Carrier Member

  
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D. D. Bartholomay,  
Organization Member

Dated at Chicago, Illinois, February 6, 1997.