

PUBLIC LAW BOARD NO. 2143

AWARD NO. 346

SEABOARD COAST LINE RAILROAD COMPANY

VS.

UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: "Claim of Fireman C. P. Peterson, Jr., for issue of a clear record and payment for all lost time earnings as a result of fifteen (15) days' suspension for alleged violation of Operating Rule 708, commencing November 17, and ending December 1, 1980."

RULE INVOLVED: Mr. Peterson was suspended for violation of a single rule, Opererating Rule 708, reading as follows:

SCL General Regulations, Rule 708. "Employees must not absent themselves from duty, or change off with others for a tour of duty, or part of a tour of duty, without first obtaining permission from the proper officer. When leave of absence is desired, it must be requested in ample time to protect the vacancy."

FINDINGS: In his letter of October 22, 1981 to General Chairman Higginbotham, Director of Labor Relations R. I. Christian stated that discipline was based upon violation of "Special Instructions and Operating Rule 708." However, letter of discipline from Superintendent Chick to Claimant Peterson makes no mention of special instructions and no mention of such instructions is contained in the transcript of the investigation.

Carrier relies on the incriminating testimony given by Crew Clerk M. M. Brown. Mr. Brown testified that on the morning of October 25, 1980, he had a conversation with claimant at about 9:00AM and that at such time Peterson

"said that he would mark up and work that day, but he would need to be off the following day which was Sunday, the 26th. I was short of men on the Extra Boards at the

time and I said 'Alright, mark up.' I wasn't sure whether I could cover him the next day and at the time said "Well, he would always mark off sick if necessary." He left me with the indication that he was going to call in the following Sunday and mark off again."

Strangely enough, in the investigation no one questioned claimant as to whether or not he did in fact say that he would always mark off sick if necessary. Mr. Peterson testified that he did not tell Mr. Brown that he definitely wanted off the next day but simply stated to the crew clerk that he would likely want to be off.

In spite of the fact that Mr. Brown testified that he understood that Mr. Peterson definitely wanted off on the 26th and would mark off sick if necessary, Brown made no effort to secure a replacement. Indeed although Fireman P. A. Wilson called at 7:00 on the 26th anxious to work an assignment, and although Mr. Brown swore that he intended to use Wilson to take Peterson's place, and indeed ultimately did so, Mr. Brown did not notify claimant that a replacement was readily available. Instead, when claimant reached Mr. Brown at 1:10PM on the 26th the crew clerk denied claimant permission to mark off and a heated argument ensued. From the record it is apparent that considerable ill will existed between claimant and management personnel at Hialeah Yard.

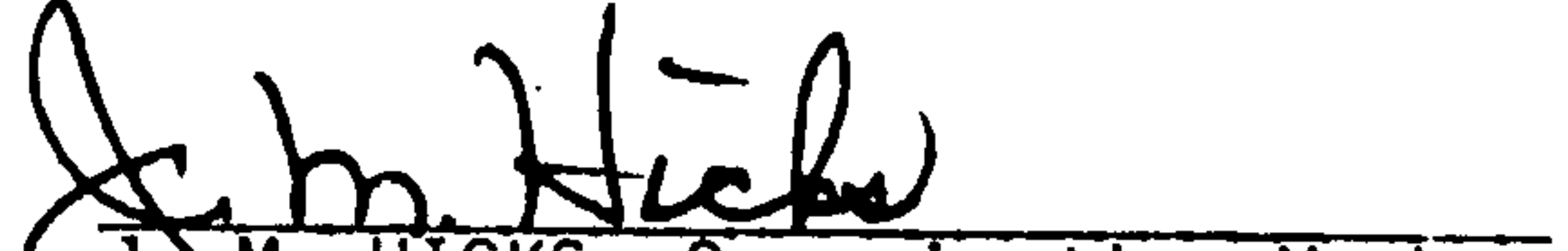
Letter of discipline dated November 2, 1980, recites that claimant violated Rule 708 in that he "did not request to be off in ample time to protect the vacancy". In fact, it is clear from Mr. Brown's testimony that he understood on the previous day that claimant definitely wanted off. It is further clear that Brown knew on October 26 that a replacement was anxious to fill the vacancy. Under such record it was improper to discipline claimant for violation of Rule 708.

AWARD: Claim sustained. Carrier shall make this award effective within 30 days

of the date hereof.


DAVID H. BROWN, Neutral Member


W. H. MORSE, JR., Carrier Member


J. M. HICKS, Organization Member