

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CN – WISCONSIN CENTRAL RAILROAD**

Case No. 46

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The five (5) day suspension imposed upon Foreman A. Boothe for violation of USOR General Rule A and C, USOR Rule 100 and LIFE Rule Section II, 1, h in connection with a personal injury sustained on March 26, 2009 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier’s File WC-BMWE-2009-00015).
2. As a consequence of the violation referred to in Part 1 above, Claimant Boothe is entitled to the full remedy detailed in Rule 31(I) of the Agreement.”

FINDINGS:

By letter dated March 18, 2009, the Claimant was directed to attend a formal hearing and investigation to ascertain the facts and determine whether the Claimant had violated any Carrier rules, instructions, and/or policies in connection with a March 26, 2009, incident in which the Claimant sustained an on-duty injury. The investigation was conducted, as scheduled, on April 1, 2009. By letter dated April 16, 2009, the Claimant was notified that as a result of the hearing, he had been found guilty of violating USOR General Rule A and C, USOR Rule 100 and LIFE Rule Section II, 1, h, and that he was being suspended for five days. The Organization thereafter filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to discipline the Claimant. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because

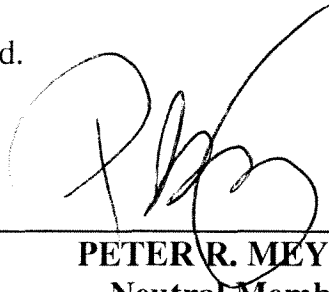
the evidentiary record establishes that the Claimant is guilty as charged, because the Claimant was afforded a fair and impartial hearing, and because the discipline imposed was not harsh, arbitrary, or an abuse of discretion. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to prove that any rule violation occurred in connection with this matter, because the evidence shows that the Claimant never entertained any doubts about the safety of his actions, and because the Claimant chose a course of action that was appropriately safe.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant violated Carrier rules when he allegedly did not take the “safe course” as required by those rules. It is fundamental that just because an accident occurs and somebody is injured, does not necessarily mean that the employee did not act properly within the scope of the Carrier’s safety rules. After a thorough review of the transcript, this Board finds that the Carrier simply failed to prove that the Claimant acted in an unsafe fashion while performing his duties on the date in question. Therefore, we find that the Carrier has failed to meet its burden of proof and the claim must be sustained.

AWARD:

The claim is sustained.


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PETER R. MEYERS
Neutral Member


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CARRIER MEMBER

DATED: Sept 12 2011


A handwritten signature in black ink is written over a horizontal line.
ORGANIZATION MEMBER

DATED: September 13 2011