

BEFORE PUBLIC LAW BOARD NO. 7544

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
SOO LINE RAILROAD COMPANY**

Case No. 10

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

1. The discipline (dismissal) imposed upon Mr. K. Bremer by letter dated March 2, 2010 in connection with charges of ‘. . . failure to comply with OTS Rule 21.1.6 B Railroad crossing at Grade: B) Manual interlocking,’ on December 15, 2009, was arbitrary, capricious, excessive and in violation of the Agreement (System File D-46b-09-390-20/8-00524 CMP).
2. As a consequence of the violation referred to in Part (1) above, Claimant K. Bremer shall now receive ‘. . . 1) all lost wages, including but not limited to, straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare and dental insurance, seniority and all other benefits to which entitled, but lost as a result of Carrier’s arbitrary, capricious, unreasonable and excessive discipline in assessing Claimant dismissal from service on March 2, 2010.’”

FINDINGS:

By notice dated December 21, 2009, the Claimant was directed to attend a formal hearing and investigation to develop the facts and place responsibility, if any, in connection with charges that Claimant entered a manual interlocking without proper authority, in violation of Carrier rules. The hearing began, after four postponements, on January 25, 2010, and was reconvened and concluded on February 12, 2010. By letter dated March 2, 2010, the Claimant was informed that as a result of the hearing, he had been found guilty as charged and was being dismissed from the Carrier’s service. The Organization filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to

discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the claim is not in accordance with Rules 18 and 47 of the Agreement, because the remedy sought is excessive and improper, because the Claimant was afforded his due process rights, because the facts developed support a finding of responsibility, because there is no support for the Organization's arguments, and because the discipline imposed was not excessive, capricious, arbitrary, or unwarranted. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to sustain its burden of proof on the lone charge here in that it is undisputed that the Claimant was not in charge of track protection and entered the interlocking after challenging and being assured by the foreman that he enjoyed track protection through the interlocking, because the Claimant's actions therefore were blameless, and because the Carrier's actions in dismissing the Claimant were arbitrary, capricious, and unreasonable.

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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to comply with OTS Rule 21.1.6B Railroad crossing at Grade: B Manual interlocking on December 15, 2009. The Claimant admits that he entered the interlocking, but states that he was simply following orders and he actually challenged the orders and they were confirmed several times. This Board finds that the Claimant did act in violation of the rules, but there are some extenuating circumstances.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was terminated for his rule violations. Although the Claimant did violate some of the Carrier rules in his actions on the date in question, there is no question that there were extenuating circumstances and other individuals who were also responsible for the Claimant's wrongdoing. Consequently, this Board orders that the Claimant be reinstated to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension. The Board notified the Carrier and the Organization on June 18, 2012, that the intention of the Board was to reinstate the Claimant as of July 15, 2012. Consequently, if the Claimant was not reinstated by the July 15, 2012, date, he shall receive back pay from that date.

AWARD:

The claim is sustained in part and denied in part. The Claimant is to be reinstated to service but without back pay. The Claimant should have been reinstated to service on or before July 15, 2012, and, therefore, he is entitled to back pay from that date.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 9/28/2012



ORGANIZATION MEMBER

DATED: 10/12/12