

BEFORE PUBLIC LAW BOARD NO. 4633

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
and  
INDIANA HARBOR BELT RAILROAD COMPANY

Case No. 3

Dispute: Claim of the Brotherhood:

- (1) The ten days of suspension imposed upon Trackman P. Alvarado for allegedly passing by C.P. Rose on Track No. 1 while operating track car A-30034 to Franklin Avenue without authority from the Carrier dispatcher on December 26, 1986, was without just and sufficient cause and on the basis of unproven charges;
- (2) The Claimant shall have his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

Findings:

Claimant P. Alvarado is employed by Carrier as a trackman. On December 28, 1986, the Claimant received a letter instructing him to appear for an investigation in connection with a charge reading:

issuance of CT-401 from K.W. O'Brien to you at Argo Tower at approximately 8:17 a.m., December 26, 1986, on passing by C.P. Rose on Track #1 in a westerly direction while operating track car A-30034 to Franklin Avenue without authority from the IHB Dispatcher.

The investigation was held on February 11, 1987, and as a result, Claimant was assessed ten working days of suspension. The Organization thereafter filed a claim on Claimant's behalf, challenging his suspension.

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 the Carrier's rules that pertain to obtaining permission to occupy the No. 1 main track. Therefore, he did occupy that track between C.P. Rose

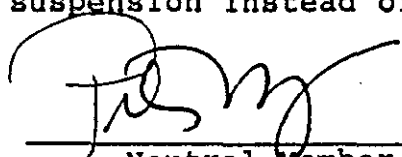
and Franklin Avenue without proper authority.

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 action to have been unreasonable, arbitrary or capricious.

In the case at hand the Claimant had been employed by the Carrier for approximately thirteen years. Although his action was a violation of the rules, this Board finds that the ten day suspension was excessive and much too severe given the nature of the wrongdoing and the length of service of the Claimant. Therefore, we hereby reduce the suspension to a five day suspension and order that the Claimant be paid the other five days and that his personnel record be adjusted to reflect a five day suspension.

AWARD

Claim sustained in part. The ten day suspension is hereby reduced to a five day suspension. The Claimant is to be made whole for the additional five days and his personnel record is to be amended to reflect a five day suspension instead of a ten day suspension.

  
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 Neutral Member

  
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 Carrier Member

  
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 Organization Member

Date: 7-27-90