

REC'D JUL 24 2013

**BEFORE PUBLIC LAW BOARD NO. 6043**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION  
IBT RAIL CONFERENCE**

**and**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 103**

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

1. The dismissal of Trackman H.A. Smith, Jr. for the alleged violation of USOR General Rule A – Safety, USOR General Rule B – Reporting and Complying with Instructions, USOR General Rule I – Duty Reporting or Absence and USOR Rule 100 – Rules, Regulations and Instructions in connection with being excessively absent from work from June 1, 2010 through February 25, 2011 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File A110506/IC-BMWED-2009-00059).
2. As a consequence of the violation referred to in Part 1 above, Claimant Smith is entitled to the remedy prescribed in Rule 33(i) of the Agreement.”

**FINDINGS:**

By notice dated February 25, 2011, the Claimant was directed to attend a formal investigation and hearing to determine whether the Claimant had violated Carrier rules, regulations, and/or policies in connection with allegedly being excessively absent from work from June 1, 2010 through February 25, 2011. The investigation was conducted, as scheduled, on March 1, 2011. By letter dated March 10, 2011, the Claimant was informed that as a result of the investigation, he had been found guilty of violating Carrier rules as charged, and that he was being dismissed from the Carrier’s service. The Organization subsequently filed the instant claim on behalf of the Claimant, 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 record contains substantial evidence proving that the Claimant was guilty as charged, because the Claimant received a fair and impartial hearing, and because the discipline imposed was warranted. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its burden of proving the charges alleged against the Claimant, and because the discipline imposed was unwarranted and subjected the Claimant to disparately harsh treatment.

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 being excessively absent during the period June 1, 2010, through February 25, 2011. The record reveals that the Claimant was absent for twenty-nine days during that period, which clearly constitutes excessive absence under the Carrier's rules.

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's previous disciplinary history shows that he was suspended for absenteeism in March of 2009, July of 2009, and March of 2010. Given that previous disciplinary background, as well as the serious rule violations here with the twenty-nine absences in eight months, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the

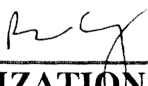
claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**CARRIER MEMBER**  
**DATED:** 7/31/13

  
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**ORGANIZATION MEMBER**  
**DATED:** 7/31/13