

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 104

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

1. The Carrier’s dismissal of employee P. Harmon for his alleged violation of USOR – General Rule B – Reporting and Complying with Instructions, USOR – General Rule H – Furnishing Information and Conduct, USOR – General Rule I – Duty Reporting or Absence in connection with his alleged falsification of time and alleged giving misinformation to his supervisor for his work performance and whereabouts between April 1, 2011, until April 26, 2011, is on the basis of unproven charges and was entirely improper, arbitrary, disparate and unwarranted (System File C110602/IC-BMWED-2011-00076).
2. As a consequence of the violation referred to in Part 1 above, Claimant Harmon is entitled to the remedy prescribed in Rule 33(i) of the Agreement.”

FINDINGS:

By notice dated April 26, 2011, the Claimant was directed to attend a formal investigation and hearing to determine whether the Claimant had violated Carrier rules, notices, or policies in connection with his alleged falsification of time and alleged giving of misinformation about his work performance and whereabouts between April 1 and April 26, 2011. The investigation was conducted, as scheduled, on April 29, 2011. By letter dated May 6, 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 evidence establishes that the Claimant was guilty, because the Claimant received a fair and impartial hearing, and because the discipline imposed was warranted and 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 meet its heightened burden of proving the charges involving moral turpitude alleged against the Claimant, because the discipline imposed was on the basis of unproven charges, and because the discipline imposed was entirely arbitrary, unjust, disparate, unwarranted, and in violation of the Agreement.

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 violating Carrier rules when he improperly inputted his time and gave misinformation to his supervisor regarding his work performed and whereabouts between April 1, 2011, and April 26, 2011. Therefore, the Claimant subjected himself to discipline.

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 record reveals that the Claimant was charged in the same Notice of Investigation as another employee, Mr. Melvin Page. The two employees were charged with the same wrongdoing and the record reveals that Mr. Page was only issued a ten-day actual suspension from service covering the period April 27, 2011, through May 10, 2011, and a twenty-day deferred suspension for a year. The Claimant in this case was terminated. The record contains no basis for the differentiation of the discipline issued to Mr. Page and to the Claimant in this case. Consequently, this Board has no choice but to find that the Claimant was treated disparately when the Carrier issued much more severe discipline to him than to the other individual who was charged in the same Notice of Investigation.

Consequently, this Board must find that the Carrier acted unreasonably, arbitrarily, and capriciously when it dismissed the Claimant. This Board orders that the Claimant shall be reinstated to service with all back pay minus a ten-day actual suspension and the Claimant shall also be issued a twenty-day deferred suspension which will end sixty days after he is returned to service.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service with back pay minus ten days' actual suspension covering the period April 27, 2011, through May 10, 2011, and the Claimant shall also be issued a twenty-day deferred suspension for a period of sixty days. If the Claimant had interim earnings, they shall be

deducted from his back pay.

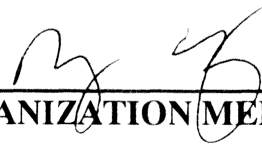


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 6/10/13



ORGANIZATION MEMBER

DATED: 6/10/13