

BEFORE PUBLIC LAW BOARD NO. 6043

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CANADIAN NATIONAL/ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 12

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

- (1) The dismissal of Ballast Regulator Operator W. Gaines, Jr., for his alleged unauthorized absence on March 27, 2000, was without just and sufficient cause, arbitrary, capricious, and excessive punishment (System File A050300/IC-134-00-6).
- (2) Ballast Regulator Operator W. Gaines, Jr., shall now be allowed the remedy prescribed in Rule 33(i).

FINDINGS:

Claimant W. Gaines, Jr., was employed by the Carrier as a ballast regulator operator at the time of this claim.

On April 5, 2000, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility, if any, in connection with his alleged absence from his assigned position without permission on March 27, 2000.

After one postponement, the hearing took place on April 20, 2000. On May 3, 2000, the Carrier notified the Claimant that he had been found guilty of having violated General Rule J of the Carrier's Maintenance of Way Rules and was being assessed discipline of dismissal from the service of the Carrier.

The Organization tiled a claim on behalf of the Claimant. The Carrier denied the claim.

The Carrier argues that the Claimant was afforded a fair and impartial hearing.

The Carrier contends that the Organization's claim that Rule J is not in the contractual agreement between the parties is irrelevant. The Carrier maintains that it is not restricted from requiring Organization employees to know and follow the Carrier's Maintenance of Way Rules. The Carrier argues that the Claimant admitted that he did not actually receive permission to be absent from work on March 27, 2000. The Carrier asserts that the Claimant did not have the right to absent himself from work without proper authority on the date in question. The Carrier argues that the Claimant contacted his supervisor on March 27, 2000, advising him that he would not be at work because his car broke down but the Claimant never requested, nor did he receive permission, to be off on the date in question. The Carrier maintains that car problems do not merit absents oneself from work. The Carrier also claims that, during the course of the investigation, the Organization took the position that the Claimant's foreman should have disciplined the Claimant without necessitating a hearing and that the Claimant was absent due to illness. However, the Carrier argues that the Claimant's foreman is allowed the ability to discipline but the Carrier is not restricted from holding an investigation and that the Claimant never alleged that he was absent due to illness. The Carrier maintains that the Organization is merely "grasping at straws" in an attempt to dismiss the Claimant's guilt. The Carrier contends that the discipline assessed was not harsh or excessive and was based not only on this incident but also on the Claimant's previous record with the Carrier, which includes warning letters and two prior suspensions. The Carrier argues

that the Claimant is a repeat offender and that the dismissal was warranted.

The Organization alleges that the Carrier did not afford the Claimant, a twenty-seven year employee, his contractual rights to due process; the Carrier failed to present substantial evidence to prove its charges against the Claimant; and that the discipline the Carrier assessed was arbitrary and capricious. The Organization contends that the Claimant was not afforded a fair and impartial hearing because he was prejudged and was not notified of the postponement of the hearing. In addition, the Organization maintains that Illinois Central Maintenance of Way Rule J is not in the contractual agreement between the Organization and the Carrier. Furthermore, the Organization claims that the Claimant did notify the Carrier of the reasons why he was not going to be at work and that there was no intention on the Claimant's part to disregard the terms of Rule J. The Organization contends that the Claimant's actions did not warrant dismissal.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

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 absent from work without authority on March 27, 2000. The record reveals that the Claimant had car trouble and was unable to come to work and called in to his supervisor. However, the Claimant did not have permission to be off work that day

and he admitted at the hearing that he did not ask for permission, nor did his supervisor give him permission to be off that day. The Carrier has to be able to count on its employees to show up for work on a regular basis.

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.

The record reveals that this Claimant had previously received several warnings, as well as two prior suspensions. Obviously, the Claimant put himself in a position to be discharged. However, the record also reveals that this Claimant has worked for the Carrier for approximately twenty-seven years. Given that lengthy seniority, this Board finds that the Carrier acted without just cause when it terminated the Claimant's employment. We find that the Carrier should have given the Claimant one last lengthy suspension to make it clear to him that if he does not show up for work, he will face termination, even **after** nearly three decades of service. Consequently, this Board orders that the Claimant shall be reinstated, but without back pay. The period that he was off shall be considered a lengthy disciplinary suspension. The Claimant shall be put on notice by the Carrier that any future unauthorized absences will lead to his dismissal.

AWARD:

The claim is sustained in part and denied in part. The Claimant is returned to service, but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member


CARRIER MEMBER
ORGANIZATION MEMBER

DATED: 6/29/01

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