

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ILLINOIS CENTRAL RAILROAD**

Case No. 17

STATEMENT OF CLAIM:

The discharge of Mr. R.L. Jones was arbitrary, unwarranted, disparate, in violation of the current working agreement, and in violation of the Claimant's due process rights. Accordingly, the Claimant should be made whole.

FINDINGS:

At the time of the events leading to this claim, the Claimant was employed by the Carrier as a trackman.

On January 25, 2002, the Carrier conducted a formal investigation to determine whether the Claimant had worked safely during his employment with the Carrier. As a result of this investigation, the Claimant was found guilty of violating Carrier's General Safety Rule A. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge the Claimant. The Carrier denied the claim.

The Carrier initially contends that the investigation clearly demonstrated that the Claimant was in violation of the Carrier's rules. The Carrier maintains that the record demonstrates that the Claimant had not performed his duties in a safe manner in accordance with General Safety Rule A. The Carrier further emphasizes that the investigation transcript proves that the Claimant received a fair and impartial hearing.

The Organization initially contends that the Carrier failed to meet its burden of proof in this matter. The record of the investigation is merely a summary of discussions between those present at the hearing. The Organization argues that the record does not contain any positive evidence that supports the Carrier's findings that the Claimant allegedly engaged in conduct that was inconsistent with the Carrier's philosophy. None of the Carrier's witnesses were able to confirm the allegations against the Claimant; the Organization emphasizes that innuendo and supposition are not substantial evidence of wrongdoing. The Organization maintains that the record actually contains considerable evidence that the Claimant did, in fact, properly perform his duties as a trackman. The Organization asserts that the charges against him were, at best, ridiculous, and they were without any substantiation or corroborative testimony. The Organization contends that because there was no probative evidence to support the Carrier's findings, the Carrier failed to meet its burden of proof.

The Organization then argues that the Carrier violated the Claimant's due process right to a fair and impartial hearing. The Organization asserts that Office Engineer Crader, who was both the Charging Officer and the Hearing Officer, and Engineering Superintendent Kelley, who assessed the discipline in this matter, prejudged the Claimant. The Organization contends that the record demonstrates that Crader interrupted both testimony and the statements of the Claimant's representative. Because the Carrier violated the Claimant's due process rights, the Organization maintains that the Carrier's

decision to dismiss the Claimant should be rescinded.

The Organization further asserts that the Carrier failed to present any credible evidence in support of the charges leveled against the Claimant. The Organization emphasizes that the discipline imposed in this case was arbitrary and capricious, so it should not be allowed to stand. The Organization emphasizes that the record shows that the Claimant should not have been charged with any offense, nor should he have been dismissed from service. The Carrier failed to show that the Claimant intended to disregard the rules.

The Organization ultimately contends that the instant claim should be sustained and the Claimant made whole.

The parties being unable to resolve their dispute, 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. The Claimant's due process rights were protected throughout the proceeding and we find that there was no pre-judgment on the part of the hearing officer.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence to support the finding that the Claimant was guilty of violating General Safety Rule A.

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.

In this case, the Claimant had been employed by the Carrier for approximately six years and has accumulated an absolutely terrible record of not working safely. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER



CARRIER MEMBER

DATED: 10-27-03

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