

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 20

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

1. The dismissal of Bridgeman R.D. Warford for his alleged unauthorized absence on March 6 and 7, 2002, was without just and sufficient cause and excessive and undue punishment (System File 040502/IC-134-02-29).
2. Bridgeman R.D. Warford shall not be allowed the remedy prescribed in Rule 33(i).

FINDINGS:

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

By letter dated March 12, 2002, the Claimant was notified to attend a formal investigation and hearing to determine his responsibility, if any, for allegedly failing to report for duty as assigned and for allegedly being absent without proper authority on March 6 and 7, 2002. The investigation was conducted, as scheduled, on March 22, 2002. As a result of the investigation, the Claimant was found to have violated Maintenance of Way General Rule J, and he was dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge the Claimant from his employment. The Carrier denied the claim.

The Carrier contends that the Claimant failed to fulfill his employment obligation

to the Carrier when he was absent without authority on March 6 and 7, 2002. The Carrier emphasizes that during the investigation, it was developed that the Claimant did not inform his supervisor that he would be absent, except that on March 6, he called to say that he was going to be thirty to sixty minutes late. The Carrier points out that the Claimant actually did not show up at all.

The Carrier argues that the Claimant was aware of the proper instructions for calling in to work. Moreover, the Claimant previously had been counseled and disciplined concerning his non-compliance with the rules, and he recently served a sixty-day suspension. The Carrier asserts that it attempted, without success, to correct the Claimant's behavior through progressive discipline on a number of occasions. The Claimant's dismissal is the final straw.

The Carrier maintains that Boards have upheld a carrier's right to discipline an employee who repeatedly violates policies. The Carrier further asserts that it is obligated to impose discipline in cases where rules are violated and due process has been maintained. The Carrier argues that considering the Claimant's work history, dismissal is quite proper in this case. The Carrier ultimately contends that the claim should be denied in its entirety.

The Organization contends that the Carrier failed to meet its burden of proof in this matter. The Organization argues that the transcript does not contain any positive evidence whatever that supports the Carrier's findings that the Claimant's actions were

inconsistent with the Carrier's philosophy. The Organization maintains that because the Claimant was absent from the investigation, the only reasonable conclusion is that there was no probative evidence to support the Carrier's findings. The Organization contends that the Carrier failed to prove the charges leveled against the Claimant.

The Organization then asserts that the record demonstrates that the Carrier prejudged the Claimant. The Organization points out that Carrier Officer Meador preferred the charges against the Claimant, presided over the investigation, and assessed the discipline at issue. The Organization emphasizes that Meador did not consider a postponement of the investigation. The Organization argues that the hearing in this matter was not fair and impartial, and the Carrier's decision to dismiss the Claimant therefore should be rescinded.

The Organization further argues that the discipline imposed upon the Claimant was arbitrary, capricious, and should not be allowed to stand. The Organization emphasizes that the Claimant should not have been dismissed in this instance because he was not present at the investigation to present his testimony. The Carrier failed to show that the Claimant intended to disregard Rule J, and its decision to discipline the Claimant should be overturned.

The Organization additionally contends that the Claimant was assessed a sixty-days suspension for absenteeism which was to commence on March 24, 2002, three days after the investigation in this case. The Carrier entered the Claimant's record into the

transcript, including a reference to that sixty-day suspension, for the stated purpose of using that record to determine the measure of discipline, if any, that may be assessed in the instant case. The Organization emphasizes that because the Claimant had not fully served the sixty-day suspension at the time he was dismissed, the Claimant did not have any opportunity to demonstrate to the Carrier that he had changed his ways upon returning to service. The Organization asserts that the Carrier's high-handed tactics renders this discipline arbitrary and capricious, and the Organization argues that the discipline should be overturned in its entirety. Discipline is not to be punitive.

The Organization ultimately contends that the claim should be sustained in its entirety.

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.

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 without proper authority on March 6 and 7, 2002. The Claimant did call in on March 6, 2002, and said he was going to be thirty to sixty minutes late. However, he never showed up for work that day. He then missed the next day as well.

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.

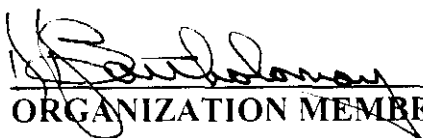
This Claimant has previously received numerous suspensions for attendance violations. The most recent suspension was a sixty-day suspension that was issued in late 2001. Given the extensive progressive discipline that has been issued to this Claimant with no positive results, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment in this case. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 2-25-04



CARRIER MEMBER

DATED: 2/25/04