

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 27

STATEMENT OF CLAIM:

Appeal of the Carrier's dismissal of Claimant J.W. Rushing on charges that the Claimant allegedly violated Carrier Rules by being excessively absent when the Claimant allegedly failed to report to his assignment on December 9, 12, 13, and 14, 2005, and by allegedly failing to follow supervisory instructions to call if the Claimant was not going to report to work.

FINDINGS:

By letter dated December 19, 2005, the Claimant was notified to attend a formal hearing and investigation on charges that the Claimant allegedly had violated Carrier Rules on excessive absenteeism when the Claimant failed to report to his assignment as Trackman in Memphis, Tennessee on December 9, 12, 13, and 14, 2005, and by allegedly failing to follow supervisory instructions to call if he was not going to report for work. After a postponement, the investigation was conducted on January 13, 2006. By letter dated January 27, 2006, the Claimant was notified that as a result of the investigation, he had been found guilty as charged and was being dismissed from the Carrier's service. The Organization thereafter filed a claim on behalf of the Claimant, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that the record shows that the Claimant was afforded a fair and impartial investigation. The Carrier insists that more than substantial evidence supports the findings of the Hearing Officer, and dismissal was warranted. The Carrier

argues that the dismissal was assessed in this case after full consideration of the Claimant's personal record.

The Carrier asserts that the Organization is incorrect in contending that "dismissal was unwarranted, unjust, excessive and in violation of the Agreement." The Carrier insists that this matter was handled properly and within the Agreement guidelines. The Carrier argues that the Organization also is incorrect in asserting that the "measure of discipline [was] inappropriate and absent the principle of progressiveness." The Carrier emphasizes that it gave full consideration to the Claimant's personal record before assessing the discipline in question.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the decision to dismiss the Claimant was unwarranted, unjust, excessive, and in violation of the Agreement. The Organization asserts that the record does not support the Carrier's decision to impose the most severe level of discipline on charges that the Claimant was absent from work for four days and did not call his supervisor. The Organization maintains that the Claimant was honest and forthcoming at the investigation. Moreover, the Organization argues that the incident required a full, fair, and thorough investigation of all elements that may have contributed to the absenteeism, and the Organization emphasizes that it is ready to cooperate in developing reasonable efforts to safeguard against another such event. The Organization insists that the Carrier's decision to discharge the Claimant was neither fair nor reasonable.

The Organization argues that it is well established within the railroad industry that the purpose of discipline is not to inflict punishment, but to rehabilitate, correct, and guide employees in the proper performance of their assigned tasks. The Organization points out that the Board consistently has held that the severity of the punishment must be reasonably related to the gravity of the offense. The Organization recognizes the Carrier's concern in the connection with the alleged infraction, but maintains that the penalty of dismissal is improper, arbitrary, and harsh in light of the nature of the incident and the non-progressive nature of the discipline. The Organization emphasizes that the Claimant was dismissed well before the Carrier applied all of the progressive disciplinary steps, so the Carrier clearly imposed non-progressive discipline without a chance to rehabilitate. The Organization maintains that the Board consistently has recognized that progressive discipline is both essential and important in the railroad industry.

The Organization ultimately contends that the instant 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 evidence and testimony in this case, and we find that there is sufficient evidence to support the finding that the Claimant was guilty of excessive absenteeism when he failed to report to his assignment as trackman on December 9, 12, 13, and 14, 2005. The record also reveals that the Claimant failed to follow supervisory instructions that he was to call if he was not going to be reporting for work on a day that he was scheduled.

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.

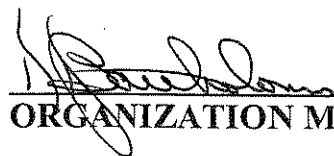
The record reveals that the Claimant in this case had previously received a one-day suspension for not reporting to work per Rule 33A on December 31, 2003; a three-day suspension for not reporting to work per Rule 33A on February 25, 2004; and a Letter of Reprimand informing him of his excessive absenteeism after having missed fourteen unauthorized days in the year 2005 by August 2, 2005. In addition, the Claimant received a five-day suspension on October 5, 2005, for failing to report for work. Given that previous disciplinary background, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant. Contrary to the position of the Organization, the record reveals that the Claimant was afforded progressive discipline and failed to improve his attendance. The Carrier had just cause to terminate this Claimant. Therefore, the Board finds that the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 5-24-07



CARRIER MEMBER

DATED: May 24, 2007