

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 28

STATEMENT OF CLAIM:

Appeal of the fifteen-day suspension assessed Claimant W. Gaines, Jr., on charges that the Claimant allegedly violated Carrier rules and/or instructions during an incident on November 9, 2005, in which the Claimant sustained a personal injury.

FINDINGS:

By letter dated November 11, 2005, the Claimant was notified to attend a formal hearing and investigation to determine whether the Claimant "violated any company rules and/or instructions during an incident where you sustained an alleged personal injury." The investigation was conducted, as scheduled, on November 16, 2005. By letter dated December 5, 2005, the Claimant was notified that as a result of the investigation, he had been found guilty of violating Operating General Rule C, and that he was being assessed a fifteen-day suspension. The Organization thereafter filed a claim on behalf of the Claimant, challenging the Carrier's decision to impose the fifteen-day suspension. The Carrier denied the claim.

The Carrier initially contends that direct testimony in the record shows that the incident and subsequent injury to the Claimant was a result of the Claimant's directly violating the cited rule. The evidence demonstrates that the Claimant should have seen the signal foundation, and the incident resulted from the Claimant's not seeing the

obstruction because he was not being alert and attentive to a hazard.

The Carrier additionally emphasizes that there was a safety briefing on the morning of the incident, during which employees were specifically warned to remain vigilant and on the lookout for unsafe conditions that may be present. The Carrier asserts that there was good visibility out of the machine, and the back portion of the foundation was exposed. The Carrier argues that it is clear that the Claimant was familiar with the area in that he had regulated that portion of the railroad only one day before the incident in question.

As for the Organization's contention that the charges were vague and imprecise, the Carrier insists that the Notice clearly apprised the Claimant of the intent of the investigation. The Carrier emphasizes that the purpose of the investigation was precisely as stated in the Notice - to gather information as to whether the Claimant had properly and safely performed his work, and/or whether the Claimant had violated any Carrier rules or instructions when he was injured on November 9, 2005.

The Carrier further argues that the discipline assessed was appropriate given the seriousness of the Claimant's rule violations and his personal record. The Carrier asserts that there is no basis for the Organization's argument that the discipline violates the current working Agreement.

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

The Organization initially contends that the Carrier failed to meet its burden of

proof in this matter. The Organization asserts that innuendo and supposition are not substantial evidence of wrongdoing. The Organization maintains that a thorough review of the transcript demonstrates that there is no probative evidence to support the Carrier's findings of an alleged rule violation in connection with the Claimant hitting the invisible foundation with the wing on the machine that he was operating.

The Organization argues that the Board consistently has held that the severity of the punishment must be reasonably related to the gravity of the offense. The Organization points out that minor rule infractions do not require exceedingly harsh sentences. The Organization asserts that the purpose of discipline is not primarily punitive, but corrective. The Organization maintains that had the Carrier actually proven that portion of the charge pertaining to the violation of some Carrier rule, then the Claimant would have been subject to the discipline prescribed. The Organization insists, however, that although the Carrier has a recognizable concern in this particular instance, the penalty of a fifteen-day suspension is arbitrary, capricious, and unwarranted, in light of the circumstances and the absence of proof of a rule infraction. Moreover, the discipline assessed is in violation of the current working Agreement. The Organization ultimately contends that the instant claim should be sustained in its entirety.

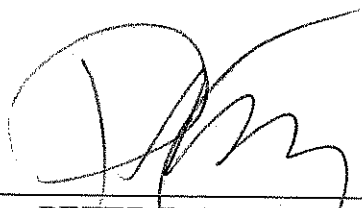
The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant violated Operating

General Rule C on November 11, 2005. There is no question that an incident occurred and that the Claimant was injured; but, in order to assess discipline against the Claimant, the Carrier must show with sufficient evidence that the Claimant violated some rule or acted in some fashion that was against Carrier policy. A thorough review of this record makes it clear that the Carrier had failed to meet that burden of proof in this case. Since the Carrier failed to meet its burden of proof, there is no basis upon which to assess discipline. Consequently, the claim must be sustained.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER



CARRIER MEMBER

DATED: 5-24-07

DATED: May 24, 2007