

**BEFORE PUBLIC LAW BOARD NO. 6043****BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES****and****ILLINOIS CENTRAL RAILROAD COMPANY****Case No. 3**

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

1. The Agreement was violated when the Carrier disciplined Welder Helper T. M. Kaminski on February 12, 1996 without a fair and impartial investigation pursuant to Rule 33 (Carrier's File 268 BMWWE).
2. As a consequence of the aforesaid violation, Welder Helper T. M. Kaminski shall be allowed eight (8) hours' pay at the welder helper's straight time rate.

**FINDINGS:**

The Organization filed the instant claim on behalf of the Claimant when he was issued a notice by Welder Starr that he would be suspended February 12, 1996, without pay for refusing to read the truck manual as instructed. The Organization argues that Rule 33(a) of the Agreement was violated by the Carrier because the Claimant was disciplined without a fair and impartial hearing.

The Carrier argues that the Claimant worked under the supervision of Mr. Starr and he had the right suspend the Claimant for failing to follow specific directions. Furthermore, the Carrier contends that under the Agreement, the Claimant had a right to request a hearing within ten days if he felt he was unjustly treated. The Claimant,

however, did not request a hearing. Therefore, the Carrier denied the claim.

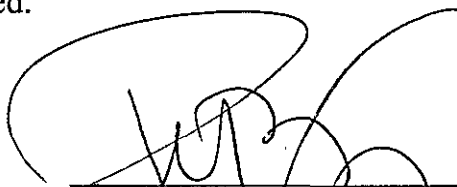
The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the record in this case and we must find that the Claimant was issued discipline without being afforded a fair and impartial hearing. Rule 33 (a) of the Agreement states clearly that employees "shall not be disciplined...until after a fair and impartial hearing". Although foremen can issue a short suspension when the circumstance dictate, in this case it was not the Claimant's foreman who issued the discipline. The discipline was issued by a welder, not a foreman. The Claimant was a welder's helper. This Board disagrees with the Carrier's interpretation that the word foreman is generic and would apply to a welder.

Consequently, a hearing should have been held pursuant to Rule 33 (a) because this case did not fall within the stated exception relating to when a foreman issues the discipline. Therefore, the claim must be sustained.

**AWARD:**

Claim sustained.

  
 PETER R. MEYERS  
 Neutral Member

  
 CARRIER MEMBER

  
 ORGANIZATION MEMBER

Dated: 7-6-98

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