

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 32

STATEMENT OF CLAIM:

Appeal of the Carrier's decision to impose a five-day suspension upon Claimant H. J. Richard, on charges that the Claimant allegedly violated the Carrier's U.S. Operating Rules A and C.

FINDINGS:

By letter dated March 10, 2005, the Claimant was notified to attend a formal hearing and investigation on charges that the Claimant allegedly had failed to properly and safely perform his work and had violated Carrier rules and/or instructions during an incident on March 8, 2005, during which the Claimant sustained an alleged personal injury. After a postponement, the investigation was conducted on April 11, 2005. By letter dated April 28, 2005, the Claimant was notified that as a result of the investigation, he had been found guilty as charged and was being assessed a five-day suspension. The Organization thereafter filed a claim on behalf of the Claimant, challenging the Carrier's decision to issue the suspension. The Carrier denied the claim.

The Carrier initially contends that the Assistant Bridge Foreman testified that as the board fell, he recognized that the Claimant failed to follow the proper procedure as he was hitting on a bolt. Moreover, the Claimant himself acknowledged that he had not checked if nails were present, but he nonetheless continued to knock the bolts out, expecting a nail to hold the board in place. The Carrier asserts that this was not the safe

course of action, and the Claimant obviously was not taking care to prevent an injury to himself.

Addressing the Organization's argument that the measure of discipline was inappropriate and failed to follow the principle of progressive discipline, the Carrier points out that no more than two days prior to the incident at issue, the Claimant was reprimanded for unnecessary talking and failing to pay enough attention to what he was doing. The Carrier maintains that this verbal reprimand apparently was not enough to instill upon the Claimant the importance of remaining alert and attentive to the task at hand.

The Carrier emphasizes that disciplinary investigations regarding safety are of paramount importance to the well-being of the Carrier's employees. 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. The Organization asserts that a review of the transcript demonstrates that it does not contain any testimony from an actual eyewitness other than the Claimant, who unequivocally denied violating any rule. The Organization argues that the record as a whole is merely a summary of the discussions among those present at the hearing, and it does not contain any positive evidence whatever in support of the Carrier's findings of any alleged actions by the Claimant that were inconsistent with the Carrier's philosophy.

The Organization maintains that innuendo and supposition are not substantial evidence of wrongdoing. The Organization points out that for the Carrier to consider any discipline whatsoever without substantive proof would be to discriminate against the

Claimant and to err considerably as to fairness and impartiality. The Organization emphasizes that a review of the record reveals that there absolutely was no probative evidence to support the Carrier's findings.

The Organization goes on to argue that the Board repeatedly 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 connection with the instant alleged infraction, but the Organization maintains that the penalty of a five-day suspension is improper, arbitrary, and harsh in light of the nature of the incident. Moreover, this penalty is not progressive in nature. The Organization points out that the Carrier normally issues discipline of a progressive nature, beginning with a letter of reprimand. The Organization emphasizes that this was not the case here in that the Claimant never was issued a letter of reprimand, but instead was issued a five-day suspension. The Organization insists that this is a non-progressive penalty, with no chance to rehabilitate, correct, and guide the Claimant in the proper performance of his assigned tasks. The Organization maintains that all Divisions of the Adjustment Board consistently have recognized that the principle of progressive discipline is both essential and important in the railroad industry.

The Organization asserts that the Carrier's decision to assess discipline in this case was unwarranted, inappropriate, and non-progressive in its application. 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 in the record to support the finding that the Claimant was guilty of failing to be alert and attentive when he performed work on March 8, 2005. The Claimant did not engage in safe practices while removing bolts and his unsafe practices led to his personal injury.

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.

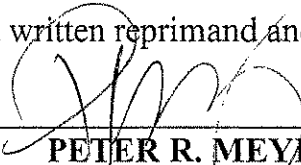
The Claimant in this case received a five-day suspension for his wrongdoing. This Board finds that the Carrier has failed to follow its own principles of progressive discipline in this case. The Board holds that this Claimant should have been issued a written reprimand and the Carrier's action in assessing a five-day suspension against the Claimant was unreasonable and arbitrary.

Consequently, this Board reduces the five-day suspension to a written reprimand and we order that the Claimant be made whole for the lost wages.

AWARD:

The claim is sustained in part and denied in part. The five-day suspension of the

Claimant shall be reduced to a written reprimand and the Claimant shall be made whole.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: June 23, 2008



CARRIER MEMBER

DATED: June 23, 2008