

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 36

STATEMENT OF CLAIM:

Appeal of the Carrier's decision to impose a five-day suspension upon Claimant E.C. Thomas, which was to be held in abeyance for one year provided the Claimant incurred no further disciplinary actions, on charges that the Claimant allegedly violated the Carrier's U.S. Operating General Rule C and Track Safety Rule 1005.

FINDINGS:

By letter dated September 16, 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 August 23, 2005, during which the Claimant sustained an alleged personal injury. After a postponement, the investigation was conducted on October 11, 2005. By letter dated October 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, which would be held in abeyance for one year provided the Claimant did not incur any further disciplinary action. 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, contrary to the Organization's assertion that there were "no captious entries" in the Claimant's work record, the Claimant in fact had a

personal injury on the “spillway” in 2002. The Carrier asserts that although the Organization may not consider that to be of any significance, the Claimant sustained two personal injuries within his short four-year career, which is unacceptable.

The Carrier then contradicts the Organization’s contention that the transcript does not support the Carrier’s conclusions and does not contain direct testimony from any competent eyewitness. The Carrier maintains that direct testimony made it clear that the Claimant’s injury resulted from the Claimant’s violation of the cited rules. The Carrier argues that the testimony of the Bridge Supervisor and the Carpenter Helper constituted positive evidence in support of the Carrier’s finding of rule violations.

The Carrier further disagrees with the Organization’s suggestion that the Carrier believes that the Claimant must have violated some rule because the Claimant was injured. The Carrier emphasizes that the Claimant’s injury was an unfortunate consequence of the rule violations. The Carrier insists that the testimony during the investigation made it very clear that had the Claimant been alert, attentive, and known his location relative to the equipment around him, then this injury would have been avoided.

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

The Organization initially contends that the transcript does not support the Carrier’s conclusions in that it does not contain any direct testimony from any competent eyewitness, other than the Claimant himself. The Organization asserts that the transcript is merely a summary of the discussions of those present at the hearing, and it contains no positive evidence whatsoever in support of the Carrier’s findings of alleged rule

violations.

The Organization points out that both the Claimant and his co-worker denied any wrongdoing on their part. The Organization suggests that the Carrier apparently found that the Claimant must have violated some rule because the Claimant was injured. The Organization emphasizes that innuendo and supposition are not substantial evidence of wrongdoing. The Organization asserts that not only were the charges in this case vague and imprecise, at best, but a thorough review of the transcript reveals that there was absolutely no probative evidence to support the Carrier's findings.

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 procedural arguments raised by the Organization, and we find them to have some merit. The Hearing Officer in this case truly exhibited some type of prejudgment which is reflected in some of his language during the hearing. Hearing Officers must remember that despite the fact that they work for the Carrier, they are required to maintain neutrality when they are fulfilling the role of Hearing Officer. In this case, the Hearing Officer did not perform his duties properly, although they fell short of the standard of having to totally clear the defendant of the wrongdoing.

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 violating Operating Rule C when he failed to position himself properly during

the course of his work.

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 was guilty of a second injury which led to a five-day overhead suspension. This Board finds that the Carrier acted unreasonably when it issued that discipline to the Claimant and we hereby order that the discipline be reduced to a Letter of Reprimand. If the Claimant lost any time as a result of the five-day suspension, he shall be made whole for it.

AWARD:

The claim is sustained in part and denied in part. The five-day overhead suspension of the Claimant shall be reduced to a Letter of Reprimand.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: July 9, 2008



CARRIER MEMBER

DATED: July 9, 2008