

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 42

STATEMENT OF CLAIM:

Claim on behalf of S. Worrell that his "... personal record be cleared of the charge immediately" for his alleged violation of U.S. Operating Rule, General Rule C when he allegedly failed to take care to prevent injury to himself and was assessed a thirty-day suspension to be held in abeyance for one year.

FINDINGS:

By letter dated January 16, 2006, the Claimant was directed to attend a formal hearing and investigation to determine the Claimant's responsibility, if any, concerning an incident on January 11, 2006, during which the Claimant allegedly sustained a personal injury. After a postponement, the investigation was conducted on April 20, 2006. By letter dated April 24, 2006, the Claimant was informed that as a result of the hearing, he had been found guilty as charged, and that he was being assessed a thirty-day suspension, which was to be held in abeyance for one year provided the Claimant did not incur any further disciplinary action. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to issue this suspension. The Carrier denied the claim.

The Carrier initially contends that the Claimant's personal work record was not used to establish guilt or innocence, but instead was reviewed only as information in the event that discipline was found to be warranted and to assist in assessing the appropriate

amount of discipline. The Carrier points out that the Claimant's work record contains fifteen entries documenting injuries during his career, and that he has missed a total of 87 days due to injury alone. The Carrier argues that this is unacceptable.

The Carrier asserts that the Claimant himself acknowledged that a safer course of action had been available to him on the date in question, and this was confirmed by other witnesses. The Carrier maintains that the Organization is incorrect in arguing that the Claimant took the only clear path at the time. The Carrier points out that the record demonstrates that the Claimant himself created the unsafe route when he instructed the track hoe operator to stop working and place his bucket in the walk way.

The Carrier maintains that the transcript proves that the Claimant was afforded a fair and impartial investigation, the Claimant was not pre-judged, he was represented by a duly accredited representative of the Organization, he was given the opportunity to prepare his case and introduce evidence on his own behalf, and he was able to confront and cross-examine witnesses.

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 this case. The Organization asserts that the transcript does not contain any direct testimony by any competent eyewitness, other than the Claimant and Supervisor Neu. The Organization argues that the transcript is merely a summary of discussions of those present at the hearing, and it contains no positive evidence whatsoever in support of the Carrier's findings of an alleged rule violation.

The Organization emphasizes that the Claimant denied any wrongdoing on his part, and Supervisor Neu testified that the Claimant took the only clear path at the time. The Organization suggests that the Carrier reached its conclusion simply because the Claimant was injured and it thereby appeared to the Carrier that he must have violated some Carrier rule. The Organization argues that a close study of the record leads only to the conclusion that substantial evidence is lacking in this case.

The Organization points out that innuendo and supposition are not substantial evidence. The Organization maintains that not only were the charges, at best, vague and imprecise, but there absolutely was 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 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 Carrier rules when he failed to properly take care to prevent injury to himself. By acting in such a manner, the Claimant placed himself in a position where he could be properly assessed discipline.

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.

In this case, it is clear that the Hearing Officer did not perform a very good investigation. For example, there are several questions in which the Hearing Officer appears to have already reached his conclusion before the end of the hearing. Although the Hearing Officer's actions were not sufficient to set aside the discipline, it is clear from the record that the hearing was not properly held and the result, a thirty-day overhead suspension issued to the Claimant, was not supported by just cause.

This Board finds that the action taken by the Carrier in issuing the suspension was unreasonable, and we hereby order that the overhead suspension be reduced to a Letter of Reprimand and the Claimant be made whole for any monies that he lost as a result of the more severe discipline.

AWARD:

The claim is sustained in part and denied in part. The thirty-day overhead suspension of the Claimant is hereby reduced to a Letter of Reprimand and the Claimant shall be made whole for any monies lost as a result of the more severe discipline.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 8-11-08



CARRIER MEMBER

DATED: August 11, 2008