

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

and

ILLINOIS CENTRAL RAILROAD

Case No. 49

STATEMENT OF CLAIM:

Claim of Derrick Engineer R.H. Galatas, that his "... personal record be cleared of the charge immediately and that he be made whole in accordance with Rule 33(i)" for his alleged violation of U.S. Operating Rule, General Rule H, FURNISHING INFORMATION AND CONDUCT, for being quarrelsome, vicious and entering into an argument, including making physical contact and threatening another employee on January 16, 2007. Organization file number: SA 031707.0 CN-IC (Galatas - Investigation). Carrier file number: IC-134-107-4.

FINDINGS:

By letter dated January 18, 2007, the Claimant was directed to attend a formal hearing and investigation on charges that the Claimant allegedly had been argumentative and quarrelsome toward other employees, and allegedly had a firearm at the jobsite while working near Mize, Mississippi, on January 16, 2007. The investigation was conducted, as scheduled, on January 25, 2007. By letter dated February 7, 2007, the Claimant was informed that as a result of the hearing, he had been found guilty of violating Carrier's General Operating Rules, General Rule H, by being quarrelsome, vicious, and entering into an argument, including making physical contact and threatening another employee. The letter further informed the Claimant that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that there is no basis for the Organization's argument that management aggravated the Claimant into insubordination. The Carrier asserts that the incident at issue involved the Claimant and other employees represented by the Organization; there were no members of management involved in any way.

The Carrier argues that the Claimant was not disciplined for being late to work. The Carrier maintains that there is no relevance to the Organization's assertions about viewing a time book. The Carrier emphasizes that if the Organization is attempting to justify the Claimant's actions as an act of frustration for not being able to view the time book, the Carrier completely disagrees that this provides any such justification.

The Carrier then asserts that the discipline imposed was not arbitrary, harsh, or in violation of the current agreement. The Carrier maintains that the discipline was appropriate and warranted under the circumstances. The Carrier insists that there is no dispute that the Claimant was involved in an altercation with a fellow employee, and the Carrier points out that it has zero tolerance for acts of hostility and/or violence in the workplace.

The Carrier maintains that the Claimant was afforded a fair and impartial hearing, and his due process rights were satisfied. The Carrier asserts that the record contains substantial evidence that sustains the finding of guilt. The Carrier argues that the penalty imposed was not arbitrary, capricious, or an abuse of the Carrier's discretion, and there are no mitigating circumstances that would justify a reduction in that disciplinary penalty.

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

The Organization initially contends that the discipline imposed was unwarranted, inappropriate, and non-progressive in its application. The Organization asserts that even if the Claimant was shown to have been insubordinate, which the Organization denies, management cannot aggravate an individual into insubordination and then discharge that employee for it. The Organization points to several Awards that hold that a carrier cannot provoke an employee into committing an indiscretion and then rely on that indiscretion to terminate that person's employment.

The Organization maintains that proof of a rule violation is not enough, by itself, to necessarily grant the Carrier carte blanche authority to arbitrarily assess discipline. The Organization insists that the totality of the surrounding circumstances must be considered. The Organization emphasizes that in the instant case, the Claimant contacted Roberts about eight times about being late after hitting a deer, but Roberts never told the Foreman. The Organization argues that it is clear that Roberts was trying to provoke the Claimant, and the Foreman's decision to not let the Claimant see the time book slowly and methodically aggravated the Claimant. The Organization points out that the Claimant had every right to see his time for prior days worked.

The Organization then asserts that it is well-established in the railroad industry that the purpose of administering discipline is not to inflict punishment, but rather to rehabilitate, correct, and guide employees in the proper performance of their duties. The Organization points out that Board Awards consistently have 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 the instant alleged offense, but maintains that the

penalty of dismissal is improper, arbitrary and harsh in light of the nature of the incident and the non-progressive nature of the discipline. The Organization emphasizes that all Divisions of the Board consistently have recognized that the principle of progressive discipline is essential and important in the railroad industry.

The Organization argues that there can be no question but that the record establishes 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 being quarrelsome and vicious and entering into an argument and making physical contact and threatening another employee on January 16, 2007. During his testimony, the Claimant admits that he was "cussing," that his body came into contact with the other employee, and that he was "quarrelsome." With those admissions, we find that the Claimant was clearly guilty of the Carrier rules.

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 the case at hand, we have a Claimant who has been working for the Carrier for

over fifteen years. Although he has some minor disciplinary matters on his personnel record, he has maintained a fairly good record and we find that the Carrier overreacted when it issued the termination to the Claimant. The Claimant's previous discipline had been a Letter of Instruction for quarrelsome behavior and a five-day suspension that was held in abeyance for hitting a pickup truck with a crane. We find that progressive discipline required the Carrier to suspend this Claimant prior to issuing him the capital punishment of termination.

This Board hereby orders that the Claimant be reinstated to service, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension. Given the Claimant's predisposition toward quarrelsome behavior, we order that the Claimant also be sent for anger-management training and that he be informed that he is being reinstated on a last-chance basis and any further quarrelsome behavior on his part will lead to his discharge. We order that the Claimant be reinstated within thirty days of the issuance of this Award.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay in accordance with the other conditions set forth in the above decision.


PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER
DATED: 5/5/08


CARRIER MEMBER
DATED: May 5, 2008