

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 50

STATEMENT OF CLAIM:

Claim on behalf of R.L. Stebbins 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 misconduct, whereby he was assessed a five-day suspension.

FINDINGS:

By letter dated January 22, 2007, the Claimant was directed to attend a formal hearing and investigation to determine the Claimant's responsibility, if any, when he allegedly made a verbal statement that showed hostility or aversion towards a group of individuals based on their race on January 19, 2007. After a postponement, the investigation was conducted on February 2, 2007. By letter dated February 14, 2007, the Claimant was informed that as a result of the hearing, he had been found guilty of making such statements on three separate occasions, and that he was being assessed a five-day suspension. 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 Organization is incorrect in asserting that the Claimant had no "captious entries" in his personal work record. The Carrier points out that in his short time with the Carrier, the Claimant waived his right to a formal investigation and accepted discipline on two prior occasions.

The Carrier argues that the Organization also is incorrect in suggesting that the

Claimant was subjected to double jeopardy in that he improperly was sent home by his supervisor, thereby being disciplined without a hearing. The Carrier asserts that the Claimant was sent home pending investigation, in compliance with Rule 33(g). The Carrier points out that the Claimant was paid for January 18, 2007, and he was held out of service on January 19, 2007, while information was being gathered about the allegations. The Claimant was returned to service on January 22, 2007. The Carrier maintains that it properly acknowledged that the first day of the five-day suspension imposed upon the Claimant had been service on January 19, 2007. The Carrier insists that the Claimant was not disciplined twice, or subjected to double jeopardy.

The Carrier further maintains that the transcript supports its conclusions in this case, and it points to the testimony of Track Supervisor Gersch, Trackman T. R. Hubbard, and Machine Operator R.L. Williams, all of whom described the Claimant's inappropriate comments. Contrary to the Organization's suggestion, the Claimant's comments were not taken out of context. Instead, it is very clear that the Claimant was making a racist comment, despite the fact that the Claimant denied any wrongdoing.

The Carrier insists that the notice of investigation clearly advised the Claimant of the intent of the investigation; both the Claimant and his representative acknowledged that they had received the notice and that they were ready to proceed with the investigation. The Carrier argues that the Claimant was afforded a fair and impartial hearing, and that substantial evidence supports the finding of an infraction. The Claimant was represented by a duly accredited representative of the Organization, and he was given the opportunity to prepare his case, to introduce evidence on his own behalf, and to

confront and cross-examine witnesses. The Carrier emphasizes that the penalty imposed was not arbitrary, capricious, or an abuse of the Carrier's discretion. Moreover, there are no mitigating circumstances that would justify a reduction in the discipline imposed.

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, and it contains no direct testimony by any competent eyewitness, other than the Claimant himself. The Organization asserts that the transcript is merely a summary of discussions of those present at the hearing, and it does not contain any evidence whatsoever to support the Carrier's findings. The Organization further argues that the Carrier has yet to charge the Claimant with any rule violations.

The Organization emphasizes that the Claimant denied any wrongdoing on his part, but it appears that because the Claimant was investigated, he must have violated some Carrier rules. The Organization maintains that a close study of the transcript and evidence 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 engaged in misconduct in violation of Carrier rules when he made racist comments that showed hostility to individuals on the basis of their race on January 19, 2007.

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 engaged in very vile behavior which often leads to very serious discipline. In this case, the Claimant was only issued a five-day suspension by the Carrier. Given the seriousness of the Claimant's wrongdoing, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued a five-day suspension to the Claimant for his racist statements. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 8-11-08



CARRIER MEMBER

DATED: August 11, 2008