

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 60

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The discipline of a ten (10) day suspension imposed upon Assistant Track Foreman Kinte Brigham for violation of LIFE US Safety Rules – Section II Core Safety Rules, Rights and Responsibilities #1 item h, U.S. Operating Rules – General Rules A – Safety, C – Alert and Attentive in connection with a personal injury sustained by him on June 12, 2008 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File S.A071808.0/IC-BMWED-2008-00009).
2. As a consequence of the violation referred to Part 1 above, Mr. Brigham’s personal record shall be cleared of the charges immediately and he shall be made whole in accordance with Rule 33(i) of the Collective Bargaining Agreement.”

FINDINGS:

By letter dated June 19, 2008, the Claimant was directed to attend a formal hearing and investigation to determine whether he had violated any Carrier rules or regulations in connection with an incident in which the Claimant incurred a personal injury while on duty. The investigation was conducted, as scheduled, on June 24, 2008. By letter dated July 3, 2008, the Claimant was informed that as a result of the investigation, he had been found guilty of violating LIFE US Safety Rules – Section II Core Safety Rules, Rights and Responsibilities #1 item h, U.S. Operating Rules – General Rules A – Safety, C – Alert and Attentive, and that he was being assessed a ten-day suspension. The Organization filed the instant claim on behalf of the Claimant, challenging the Carrier’s

decision to discipline him. The Carrier denied the claim.

The Carrier initially contends that there is no foundation to the Organization's position that the Carrier failed to meet its burden of proof in this matter. The Carrier asserts that substantial evidence was developed at the investigation to show that the Claimant did, in fact, violate the referenced rules when he permitted the angle bar to strike and injure his right hand. The Carrier argues that the Claimant's own testimony demonstrates that the incident and his resulting injury were caused by his failure to properly and sufficiently grip the angle bar while removing it from the truck.

The Carrier maintains that the Claimant's decision to attempt to catch the bar with one hand was not a sound one and was based on poor personal judgment, in violation of Item 1.h of the Core Safety Rules. The Carrier also submits that this decision certainly was not in compliance with the other two vitally important operating rules, the general rule on safety and the general rule on being alert and attentive. The Carrier emphasizes that the Claimant failed to take the safe course in that he did not either take a two-handed grip on the bar or let the bar drop when it started to slip from his hand. The Carrier insists that the Claimant was not being attentive to the task being performed, and he did not perform his work in such a manner as to prevent injury to himself. The Carrier contends that this injury could have been avoided had the Claimant been more attentive to his duties.

The Carrier argues that substantial evidence was developed at the hearing to show that the Claimant's inattention and failure to comply with the cited rules resulted in a personal injury to himself. Pointing to prior Board Awards, the Carrier submits that if

substantial evidence supports a finding of guilt, a board is without authority to substitute its judgment for that of the carrier.

The Carrier then asserts that the investigation in this matter was fair and impartial. The Carrier notes that the Claimant was provided timely and proper notice of the investigation. In addition, the Claimant and his representative were present throughout the investigation, were able to hear all of the testimony, were allowed to question all witnesses and review all documents used as exhibits, and were given the opportunity to make any and all statements that they deemed necessary. The Carrier emphasizes that no exceptions were noted by the Claimant or his representative.

The Carrier argues that once it has been determined that the charges have been proven, it is prudent to consider the employee's past discipline history in determining an appropriate measure of discipline. The Carrier points out that the Claimant's service record contains four prior disciplinary actions, including 10- and 20-day suspensions in 2004. The Claimant also had been issued seven letters of caution/instruction during his seven and one-half years of service at the time of the incident at issue. The Carrier maintains that it is evident that despite coaching and counseling, the Claimant has been the recipient of warnings and actual suspensions for progressively longer periods of time. Citing prior Awards, the Carrier then submits that when charges are proven by probative evidence, a carrier's imposition of discipline must not be altered unless it is determined to have been unreasonable, arbitrary, or capricious.

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

The Organization initially contends that the record reveals that the Claimant was not in violation of any, much less all, of the cited Carrier rules. The Organization asserts that the Carrier's chief witness, Track Supervisor Lopez, could offer only his opinion about the incident. Lopez speculated about what might have happened if the Claimant had let go of the bar. The Organization argues that when the bar began to slip, it triggered the Claimant's reflexes, which apparently indicated that the safest course of action was to try to arrest the fall of the joint bar. The Organization speculates that the Claimant's reaction might have prevented a more serious injury to himself or his co-worker, just as the Carrier speculated that no injury would have occurred if the Claimant had not tried to catch the bar.

The Organization maintains that numerous Boards have held that a carrier's decision to discipline an employee must rest on substantially more than speculation and conjecture. The Organization submits that simply entering rules into the record and speculating as to how they might have been violated is not enough to support the imposition of discipline. The Organization argues that there is no direct evidence that the Claimant violated any of the cited rules.

The Organization suggests that the Carrier apparently assumed that because an accident occurred, the Claimant violated its rules. Pointing to prior Awards, the Organization contends that this Board consistently has rejected that notion. The Organization emphasizes that the incident in question did not result in serious injury or damage to property, and there can be no doubt that the Carrier failed to prove that the Claimant was responsible for the injury sustained on June 12, 2008.

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 which led to him sustaining a personal injury on June 12, 2008. Therefore, the claim must be denied.

A close review of the record shows that when the Claimant was unloading the angle bar from the back of the truck, he was not acting safely in compliance with General Rule A and he was not alert and attentive in compliance with General Rule C. The Claimant's own testimony made it clear that he did not properly grip the angle bar when he was removing it from the truck. He should have used both hands or just let it drop; and, instead, he tried to catch a fifty-five pound steel bar with one hand.

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.

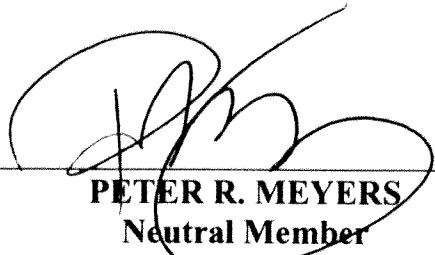
The Claimant in this case has received seven letters of caution or instruction during his seven and one-half years of service, as well as four disciplinary actions, including a 10- and a 20-day suspension. Given that disciplinary background and the seriousness of the offense here, this Board cannot find that the 10-day suspension issued

to the Claimant for his wrongdoing in this case was unreasonable, arbitrary, or capricious.

Therefore, the claim must be denied.

AWARD:

The claim is denied.

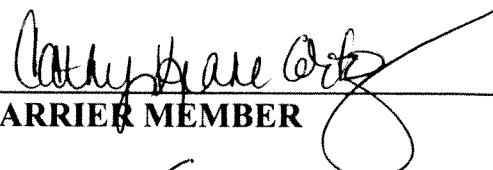


PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: Sept 17, 2010



CARRIER MEMBER

DATED: SEPT. 17, 2010