

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 61

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

1. The discipline of a ten (10) day suspension imposed upon Foreman Tristen L. Miller, Trackman Robert L. Street and Machine Operator Rick D. McKinney for violation of LIFE US Safety Rules Section II Core Safety Rules, Work Environment #13, U.S. Operating Rules – General Rule C and CN Engineering Track Standards – TS 5.0 – Turnouts, Installation #5, items c and d in connection with an incident resulting in personal injury to Foreman Miller and Trackman Street on Wednesday March 5, 2008 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier's File IC-BMWE-2008-00008).
2. As a consequence of the violation referred to Part 1 above, Messrs. Miller, Street and McKinney's personal records shall be cleared of the charges immediately and they shall be made whole in accordance with Rule 33(i) of the Collective Bargaining Agreement."

FINDINGS:

By letters dated March 7, 2008, the Claimants were directed to attend a formal hearing and investigation to determine whether they had violated any Carrier rules or regulations in connection with an incident in which Claimants Miller and Street each had incurred a personal injury while on duty. The investigation was conducted, after a postponement, on April 28, 2008. By letter dated May 16, 2008, the Claimants were informed that as a result of the investigation, they had been found guilty of violating LIFE US Safety Rules Section II Core Safety Rules, Work Environment #13, U.S. Operating Rules – General Rule C and CN Engineering Track Standards – TS 5.0 –

Turnouts, Installation #5, items c and d, and that they were being assessed a ten-day suspension. The Organization filed the instant claim on behalf of the Claimants, challenging the Carrier's decision to discipline them. The Carrier denied the claim.

The Carrier initially contends that the Claimants were accorded all rights to due process to which they are entitled under the Agreement. The Carrier asserts that all Claimants were provided timely and proper notice of the investigation. In addition, the Claimants and their representatives 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 present testimony and make any and all statements that they deemed necessary. The Carrier emphasizes that there were no objections to the conduct of the hearing either during the hearing or during the on-property handling of this claim.

The Carrier suggests that there is no dispute that the Claimants violated important safety and operating rules. The testimony and evidence adduced at the hearing demonstrates that the Claimants acted irresponsibly and violated the referenced rules. The Carrier emphasizes that the Organization took no exception and offered no argument to suggest that the charges were unproven. The Carrier argues that the only issue in dispute, as identified in the Organization's appeal, is the Organization's contention that the discipline assessed was "not fair and reasonable."

The Carrier maintains that the record shows that the discipline imposed was, if anything, extremely lenient. The Carrier submits that each of the Claimants is responsible for knowing, understanding, and complying with the rules, but the Claimants

did not fulfill these responsibilities. Applying the rules to the incident in question, Claimants Miller and Street were required to refrain from moving the tie downs on the switch panel until the panel was properly secured to the lift cables on the crane. The Carrier emphasizes that unhooking the tie downs was the last task that they were to complete before exiting the car to permit the lift to be made. The Carrier points out that the evidence and the Claimants' testimony shows that this was not the last task they performed, and that these Claimants unhooked the tie down chains prior to ensuring the lift sling was properly hooked and prepared to lift.

The Carrier insists that these actions were directly contrary to the clear provisions of Engineering Track Standard Item "c." Moreover, if the Claimants had not unhooked the tie down chains, the panel could not have swung to the other side of the car, taking them with it and resulting in their injuries. The Carrier suggests that it is only good luck that the Claimants were not injured far more severely or even killed. The Carrier also points out that the Claimants admitted that they were to get out of the car before the lift began, but that obviously did not happen.

The Carrier maintains that there is no evidence to support the Organization's position that the discipline was excessive and unreasonable. The Carrier contends that the Claimants violated clear, well-reasoned rules. None of the Claimants were new employees, and all testified that they had been involved in removing panels from cars in the past. The Carrier submits that ten-day suspensions were not excessive or unreasonable in this matter because the Claimants made serious errors in judgment and violated important safety and operating rules.

The Carrier asserts that arbitrators consistently decline to alter discipline when the violations have been proven and due process rights have been granted and respected. The Carrier also argues that numerous tribunals have held when charges are proven by probative evidence, satisfying the burden of proof, then a carrier's imposition of discipline must remain unaltered unless it is determined to have been unreasonable, arbitrary, or capricious. The Carrier further submits that absent proof that the Agreement was violated, no consideration of remedy is necessary.

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

The Organization initially contends that the record indicates that the Claimants were performing their duty as trained by their peers and with safety foremost in mind. The Organization asserts that the Claimants followed all the LIFE U.S. Safety Rules and U.S. Operating Rules, but the Claimants had not received any training or instruction regarding Engineering Track Standards. The Organization submits that the Claimants were unaware of the section regarding Turnouts, Installation #5, items c and d with which they were charged.

The Organization emphasizes that after this incident, the Carrier invested in new equipment, changed the method of binding panels in the cars, and instructed employees on the method now used. The Organization suggests that the Carrier would not have taken these measures if the previous method used by the Claimants had been safe and proper. The Organization insists that the Claimants were not at fault for the incident at issue, and any discipline imposed in connection with that incident cannot stand.

The Organization submits that the Carrier apparently assumed that because an accident occurred, the Claimants violated its rules. Pointing to a number of prior Awards, the Organization contends that this Board consistently has rejected that notion. The Organization argues that pursuant to these Awards, there can be no doubt that the Carrier failed to prove that the Claimants were responsible for the injuries sustained on March 5, 2008. The Organization asserts that the Claimants were disciplined solely because an injury occurred.

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 Claimants were guilty of violating Carrier Operating and Safety Rules when the Claimants failed to refrain from removing the tie downs on the switch panel until the panel was properly secured to the lift cables on the crane. The engineering track standards make it clear that “the panel will only be released once the crane lift lines are secured to the panel.” Since the tie down chains had been unhooked, the panel swung to the other side, taking the Claimants with it and that resulted in their injuries.

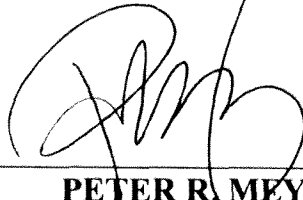
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier’s imposition of discipline unless we find its

actions to have been unreasonable, arbitrary, or capricious.

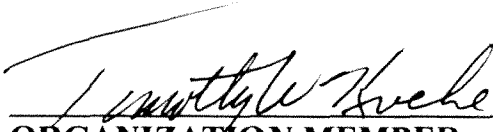
The Claimants in this case received ten-day suspensions for their unsafe work behavior. Given the wrongfulness of their behavior and the seriousness of the event, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued ten-day suspensions to all of the Claimants. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER

DATED: Sept 17, 2010


CARRIER MEMBER

DATED: Sept 17, 2010