

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 64

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

1. The dismissal of Trackman Robert Earl Williams for violation of U.S. Operating Rules D and H and LIFE Core Safety Rules item 'e', in connection with the March 10, 2008 reporting of a personal injury suffered on January 16, 2008 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File S.A051208.0/IC-BMWE-2008-00002).
2. As a consequence of the violation referred to Part 1 above, Mr. Williams' 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 March 14, 2008, the Claimant was directed to attend a formal hearing and investigation to determine whether he had violated any Carrier rules or regulations by failing to report a January 16, 2008, injury. The investigation was conducted, as scheduled, on March 24, 2008. By letter dated April 9, 2008, the Claimant was informed that as a result of the investigation, he had been found guilty of violating U.S. Operating Rules D and H and LIFE Core Safety Rules item 'e', and that he was being dismissed from the Carrier's service. The Organization filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that the investigation in this matter was fair and

impartial. The Carrier asserts that the transcript shows that the Claimant was given ample opportunity to call, question, and cross-examine witnesses. The Carrier argues that the Claimant was afforded his choice of representation, the Claimant and his representative attended the hearing, and there is no indication that the hearing officer showed undue bias or that the Claimant was denied any opportunity to present additional facts in support of his defense. The Carrier submits that during the on-property handling, the Organization never alleged that the investigation proceeding was procedurally flawed in any way.

The Carrier maintains that the record demonstrates that substantial probative evidence was adduced to support the Carrier's finding that the Claimant was guilty of violating the cited rules. The Carrier points out that the Claimant's own testimony indisputably proves that the Claimant committed these violations. The Claimant admitted not only that he failed to turn in an injury report until March 10, 2008, but that he also failed to notify a supervisor in a timely fashion. The Carrier emphasizes that it is obvious that the Claimant did not make certain that he followed the procedure for reporting an injury, nor did he even attempt to do so within an appropriate timeframe. The Carrier asserts that more than fifty days had elapsed from the date of the Claimant's alleged injury to the date on which he filed the injury report. The Carrier contends that the Claimant violated the cited rules by failing to report his alleged injury as prescribed therein.

The Carrier insists that it has met its burden of proof in this matter. The Claimant was conclusively and properly proven guilty of the charges.

The Carrier goes on to submit that the discipline imposed in this case was warranted. The Carrier points out that the Claimant willfully neglected safety and operating rules that ensure employees have an atmosphere of order and safety. The Carrier suggests that if an injury did occur on January 16, 2008, the Claimant's gross carelessness exponentially increased the risk of prolonging and further aggravating the alleged injury, and it also interfered with the required timeliness of notification necessary for the Carrier to adequately investigate the injury. The Carrier contends that it can ill afford to retain employees who exhibit such a blatant disregard for the rules in that this would set a dangerous example likely to be perceived as acceptable by other employees.

The Carrier further argues that the Claimant's work record further justifies his dismissal. The Claimant previously was dismissed for failing to report an injury in accordance with the rules. The Carrier insists that as a long-time employee, there is no excuse for the Claimant's conduct. The Carrier contends that anything short of dismissal could result in greater risk of injury to the Claimant and possibly to other employees.

The Carrier maintains that the Claimant's careless and blatant withholding of crucial information cannot be tolerated or condoned. The Carrier also asserts that there is significant arbitral precedent and support for the Carrier's decision to discharge the Claimant. Moreover, numerous tribunals have held that when charges are proven by probative evidence, a carrier's imposition of discipline must remain unaltered unless it is determined to have been unreasonable, arbitrary, or capricious. The Carrier submits that the Board does not have jurisdiction to substitute its own judgment for that of management unless the record shows that management's decision is without foundation

in fact.

The Carrier insists that it is obligated to impose discipline in cases where rules are violated and due process has been maintained. The Carrier asserts 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 the discipline assessed.

The Carrier goes on to suggest that if this Board is compelled to consider a remedy, then any compensation due the Claimant must be offset by all compensation earned by him in any other employment. In making this point, the Carrier cites Rule 33(i) of the Agreement, as well established practice on this property.

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

The Organization initially contends that the record clearly shows that the Claimant did not try to hide his injury from the Carrier. The Organization asserts that instead, the Claimant simply attributed the pain associated with the January 16 incident to the usual bumps and bruises associated with track work. The Organization argues that when the pain failed to subside while performing his normal duties, the Claimant took vacation to rest his leg, thinking that his knee would get better.

The Organization maintains that when the Claimant determined that he needed medical attention, and it was determined that there was an injury, the Claimant attempted to complete the injury report on February 19, 2008, but he was instructed to wait. Pointing to prior Board Awards, the Organization suggests that it is well established that injuries are not always immediately manifested. The Organization acknowledges that the

Claimant's delay in reporting his injury is significantly longer than what occurred in these prior Awards, but the record makes clear that the Claimant did not believe that he was injured until such time passed without relief that the Claimant thought it necessary to seek medical attention.

The Organization emphasizes that once he was diagnosed with an injury, the Claimant immediately attempted to report the injury in the prescribed manner. The Organization insists that the Claimant cannot be faulted for this, but if the Claimant is determined to be culpable, the ultimate penalty of discharge is unjust, unwarranted, and excessive. Pointing to prior Board Awards, the Organization asserts that the proper purpose of discipline is to rehabilitate, correct, and guide employees. The Organization submits that the dismissal of the Claimant, with over thirty years of otherwise satisfactory service, serves no purpose other than punishment.

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 U.S. Operating Rules D and H, as well as the LIFE Core Safety Rules item 'e,' when he failed to report a personal injury in compliance with the rules. The record reveals that the Claimant was injured on January 16, 2008, and failed to report that injury until March 10, 2008. During that time, the Claimant worked thirteen days,

requested vacation, returned from vacation, and finally requested a form to fill out. He then waited another twenty days before he completed that form. The total days between the Claimant's injury and the time that he reported it was fifty-five days.

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.

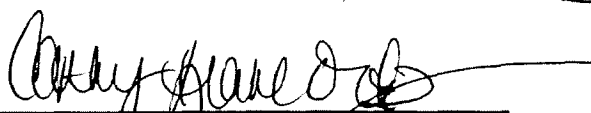
The Organization argues that the Claimant has been employed by the Carrier for thirty-two years. The Carrier points out that after thirty-two years, the Claimant should know the rules. The Carrier has a good reason for its injury reporting rules. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment after this serious rule violation. Therefore, the claim must be denied.

AWARD:

The claim is denied.

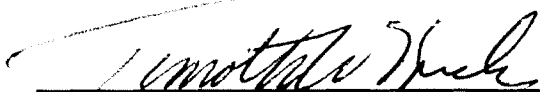


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: October 6, 2010



ORGANIZATION MEMBER

DATED: October 6, 2010