

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 65

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

1. The discipline of a ten (10) day suspension imposed upon Welder Jose D. Lopez and Welder Helper Thomas Lynn Johnson for violation of USOR 100, 1002, 1004 and OTS Rules 300 and 804 in connection with working outside of work limits at the 47 Crossover, Mile Post 11.3 on the Joliet Sub at approximately 2:15 P.M. on March 7, 2008 is unjust, unwarranted, excessive and in violation of the Agreement (System File S.A051308.0/IC-BMWED-2008-00001).
2. As a consequence of the violation referenced to in Part 1 above, Messrs. Lopez and Johnson’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 notice dated March 10, 2008, the Claimants were directed to attend a formal investigation and hearing on charges that the Claimants had violated Carrier rules and/or regulations in connection with an incident during which the Claimants allegedly had worked outside of the established work limits. The investigation was conducted, after a postponement, on March 24, 2008. By notice dated April 8, 2008, the Claimants were informed that as a result of the investigation, they had been found guilty of violating USOR 100, 1002, 1004 and OTS Rules 300 and 804, and that they each were being assessed a ten-day suspension. The Organization subsequently filed the instant claim on behalf of the Claimants, challenging the Carrier’s decision to discipline them. The

Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence proves the Claimants' guilt, because the hearing was fair and impartial, and because the discipline assessed was warranted. The Organization contends that the instant claim should be sustained in its entirety because the Claimants' responsibility clearly is mitigated by the dispatcher's failure to grant Claimant Lopez the authority that he requested when he reported that the Claimants needed to work on 47 Crossover switch.

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 several Carrier safety rules while working outside of the established work limits with no authority on March 7, 2008. A review of the transcript makes it clear that the Claimants both admitted their responsibility for the rule violations. Claimant Johnson admitted responsibility in regard to the incident and that he and Claimant Lopez did not have authority to be in those limits. Claimant Lopez also admitted responsibility for the incident and admitted that the train dispatcher did not give him authority to work inside the control point on the frog.

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

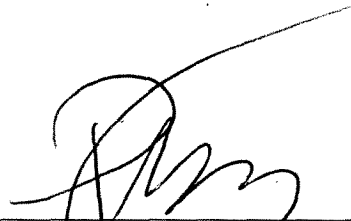
actions to have been unreasonable, arbitrary, or capricious.

The Claimants in this case received ten-day suspensions. Claimant Lopez had had a previous five-day deferred suspension for improper job briefing, one of the safety rules that was violated here. Although Claimant Johnson had no previous disciplinary actions, he had a relatively short seniority, having hired out on May 24, 2004.

The rule violation here is extremely serious. The Carrier has put in the record several previous awards where employees who fouled the track were issued much more severe discipline than the ten-day suspensions issued here. Given the facts of this case and the previous records and tenure of the Claimants, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued ten-day suspensions to these two Claimants. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

CARRIER MEMBER

DATED: March 31, 2011



ORGANIZATION MEMBER

DATED: March 31, 2011