

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 76

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

1. The dismissal of Claimant P. McLaughlin for the alleged violation of U.S. Operating Rules, General Rule B, Reporting and Complying with Instructions, General Rule I, Duty-Reporting or Absence and Rule 100, Rules, Regulations and Instructions in connection with his alleged excessive absenteeism during the time period of March 19, 2009 up to and including June 17, 2009 is harsh, excessive, arbitrary and capricious, on the basis of unproven charges and in violation of the Agreement (System File A-09-09-14/IC-BMWE-2009-00075).
2. As a consequence of the violation referenced in Part 1 above, Mr. P. McLaughlin is entitled to the full remedy detailed in Rule 33(i) of the Agreement."

FINDINGS:

By letter dated June 19, 2009, the Claimant was directed to attend a formal hearing and investigation to determine whether he had violated any Carrier rules, instructions or policies when he allegedly was excessively absent during the period from March 19 through June 17, 2009, and whether he had failed to report for his assignment on June 16 and 17, 2009. The investigation was conducted, after two postponements, on July 8, 2009. By letter dated July 24, 2009, the Claimant was informed that as a result of the investigation, he had been found guilty as charged and 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 contends that the instant claim should be denied in its entirety because

the evidence in the record proves that the Claimant was guilty as charged, because the Claimant was afforded a fair and impartial investigation, because the discipline imposed was warranted, and because the Organization's requested remedy is excessive. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its burden of proof, because the evidence shows that the Claimant followed the established rules and/or procedures in connection with absences and reporting for duty, because all but two of the Claimant's absences were authorized, and because the discipline imposed was harsh, excessive, arbitrary, and capricious.

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 excessive absenteeism during the timeframe March 19 through June 17, 2009, and the Claimant failed to report for his assignment on June 16 and 17, 2009. The record reveals that the Claimant was absent ten days during the period March 19 through June 17, 2009, and did not request authorization in advance to be off on any of those days. The Claimant admits that he was absent on those ten days.

The record also reveals that the Claimant admitted that he missed work on June 16 and 17, 2009, because he was in jail. There is no record that the Claimant asked permission to be absent or prearranged his absences on any of the occasions set forth above.

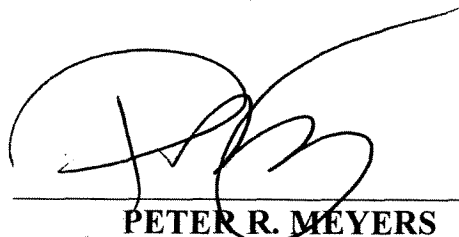
Once this Board has determined that there is sufficient evidence in the record to

support the finding that the Claimant was guilty of excessive absenteeism, 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 record reveals that the Claimant previously had been suspended on five separate occasions for attendance. The Claimant was also issued two deferred suspensions for attendance and had shown a pattern of disregard for the Carrier's attendance rules. Regular attendance is an important element of railroad employment. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment after these latest infractions. 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