

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 78

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

1. The Carrier’s decision to dismiss Claimant M. Evans from service for the alleged violation of USOR General Rule H in connection with his alleged June 30, 2009 felony conviction is unwarranted, based upon unproven charges and in violation of the Agreement (System File A 09 09 23/IC-BMWED-2009-00080).
2. As a consequence of the violation outlined in Part 1 above, the Claimant shall now receive the remedy prescribed by the parties in Rule 33(i) of the Agreement, effective July 1, 2007.”

FINDINGS:

By notice dated July 10, 2009, the Claimant was directed to attend a formal investigation and hearing to determine whether the Claimant had violated Carrier rules, instructions, or policies in connection with his conviction of a felony offense on Jun 30, 2009. The investigation was conducted, after a postponement, on July 30, 2009. By letter dated August 14, 2009, the Claimant was informed that as a result of the investigation, he had been found guilty of violating Carrier rules as charged, and that he was being dismissed from the Carrier’s service. The Organization subsequently filed the instant claim on behalf of the Claimant, challenging the Carrier’s decision to dismiss him from service. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the evidence establishes that the Claimant was guilty, because the Claimant received a

fair and impartial hearing, and because the discipline imposed was not harsh, arbitrary, or an abuse of managerial discretion. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its burden of proving the charges alleged against the Claimant, and because the punishment of dismissal was unwarranted under the totality of the circumstances.

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 Rule H when he pled guilty to a felony offense in the state of Mississippi. The record contains substantial evidence that the Claimant pled guilty to a charge of lustful touching, which is a felony under the laws of the state of Mississippi. That guilty plea is sufficient to constitute a violation of Carrier Rule H, which prohibits immoral conduct, including, but not limited to, conduct of any employee leading to the conviction of any felony.

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.

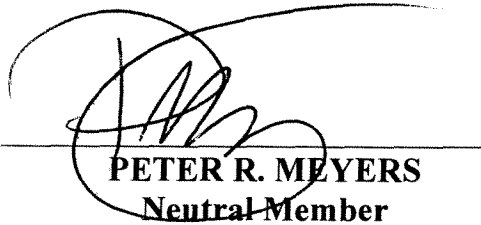
The Claimant in this case was found guilty of the crime as a result of a plea bargain. He stated that he took the plea in an effort to remain out of jail so that he could support his family, which consists of nine children. The Claimant was not dishonest at

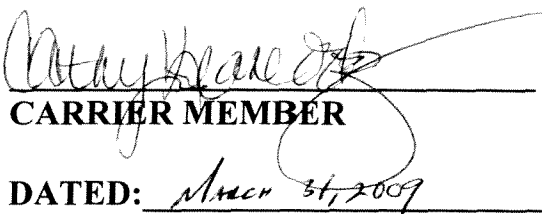
all with the Carrier, and he reported the guilty plea immediately to management. The Carrier even allowed the Claimant to work for a period of time subsequent to his guilty plea and his admission.

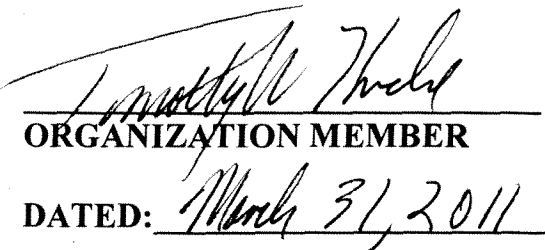
This Board has reviewed all of the relevant circumstances in this case, including the contrition of the Claimant, and we find that the Carrier's action in permanently terminating the Claimant's employment was unreasonable, arbitrary, and capricious. This Board has determined that there was sufficient basis for a lengthy suspension, but there was no just cause for the issuance of a permanent dismissal to the Claimant. Therefore, we order that the Claimant be reinstated to service, but without back pay. The period that the Claimant was off work shall be considered a lengthy disciplinary suspension in response to his violation of Rule H.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.


PETER R. MEYERS
Neutral Member


CARRIER MEMBER
DATED: March 31, 2009


ORGANIZATION MEMBER
DATED: March 31, 2011