

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE**

**and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 79

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

1. The discipline in the form of a fifteen (15) day suspension without pay and a twenty (20) day suspension deferred for one (1) year, imposed upon Claimant J. Arreola, Jr. for his alleged violation of U.S. Operating Rules – General Rule A – Safety, U.S. Operating Rules – General Rule C – Alert and Attentive, U.S. Operating Rules – Rule 100 – Rules, Regulations and Instructions and CN US Region LIFE Safety Rules and Recommended Practices – Section II, Core Safety Rules, Rights and responsibilities #1 and h in connection with his sustained personal injury while working at Bloomingdale, Illinois at Mile Post 29.55 on Thursday, April 30, 2009 at approximately 10:45 A.M. is based upon unproven charges, which warrants no discipline of any degree whatsoever (System File A-09-09-21/IC-BMWE-2009-00077).
2. As a consequence of the violation outlined in Part 1 above, Mr. J. Arreola, Jr. is entitled to the full remedy detailed in Rule 33(i) of the Agreement, effective July 1, 2007."

FINDINGS:

By letter dated May 4, 2009, the Claimant was directed to attend a formal hearing and investigation to determine whether he had violated any Carrier rules or regulations in connection with an April 30, 2009, incident during which the Claimant allegedly suffered a personal injury. The investigation was conducted, after a postponement, on July 10, 2009. By letter dated July 29, 2009, the Claimant was informed that as a result of the investigation, he had been found guilty of violating U.S. Operating Rules and LIFE Safety Rules, that he was being suspended for fifteen days without pay, and that an

additional twenty-day deferred suspension was being imposed. The Organization filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence proves that the Claimant was guilty as charged, because the Claimant was afforded a fair and impartial hearing, 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 as the charges leveled against the Claimant, and because the discipline imposed was excessive.

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 the Carrier has failed to meet its burden of proof that the Claimant violated Carrier safety rules when he was injured on duty on April 30, 2009. Therefore, the claim must be sustained.

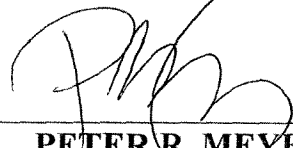
It is clear that the Claimant did get injured while he was working on the date in question. However, the record reveals that the Claimant was working in the rain and his equipment was very wet. Something slipped and the Claimant injured himself, but there is absolutely no evidence in this record that the Claimant acted in violation of the rules. Neither of the supervisors who testified at the hearing was present at the time of the accident and observed the Claimant engaging in his work immediately before the

incident. They only assumed that the Claimant could have done something different, but there was really no evidence that he violated any Carrier rules that led to the accident.

This Board has ruled on several occasions in the past that just because an accident occurs, does not necessarily mean that a Claimant was acting in violation of the rules. That principle applies to this case here. In order for the Carrier to have the right to impose discipline, it must show that the Claimant acted in violation of some Carrier rule leading to the accident. The Carrier failed to do that in this case. Therefore, the claim must be sustained.

AWARD:

The claim is sustained. The fifteen-day suspension and the twenty-day deferred suspension shall be removed from the Claimant's record and he shall be made whole.



PETER R. MEYERS
Neutral Member


CARRIER MEMBER

DATED: June 6, 2011


ORGANIZATION MEMBER

DATED: June 6, 2011