

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 80

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

1. The Carrier’s decision to place a letter of reprimand in employe G. Miller’s personal file as well as imposing upon him a fifteen (15) day deferred suspension from Monday, August 24, 2009 until Monday, September 14, 2009 for the alleged violation of USOR ‘A’ and ‘C’ in connection with his personal injury that occurred on June 21, 2009 at approximately 1000 hours at or near Mile Post 80 in Rockford, Illinois was on the basis of unproven charges and was entirely arbitrary, unjust, unwarranted and in violation of the Agreement (System File A 09 09 23 Miller/IC-BMWED-2009-00081).
2. As a consequence of the violation referred to in Part 1 above, Claimant Miller shall receive the remedy prescribed in Rule 33(i) of the Agreement.”

FINDINGS:

By notice dated June 25, 2009, the Claimant was directed to attend a formal investigation and hearing to determine whether the Claimant had violated Carrier rules, notices, or policies in connection with his personal injury suffered on June 21, 2009. The investigation was conducted, after two postponements, on July 28, 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 assessed a letter of reprimand which also activated a previously incurred fifteen-day deferred suspension. The Organization subsequently 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 the evidence establishes that the Claimant was guilty, because the Claimant received a fair and impartial hearing, and because the discipline imposed was warranted and was not inappropriate or excessively harsh. 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, because the discipline imposed was on the basis of unproven charges, and because the discipline imposed was entirely arbitrary, unjust, unwarranted, and in violation of the Agreement.

The parties being unable to resolve their dispute, this matter came before this Board.

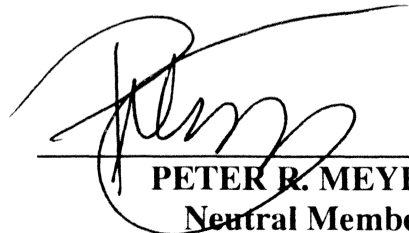
This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant violated any rules when he was injured on June 21, 2009. Although the record reveals that the Claimant was shoveling on top of a pile of rip rap and slipped while so doing, there was no showing that his actions in any way violated any Carrier rule. This Board has held on numerous occasions in the past that simply because an injury occurs does not necessarily mean that the employee was engaged in behavior that violated Carrier rules. In this case, none of the witnesses actually saw the incident occur, and the fact that the Claimant slipped and fell and injured his knee is not enough to support disciplinary action in this case.

For the reasons set forth above, this claim must be sustained in its entirety and the

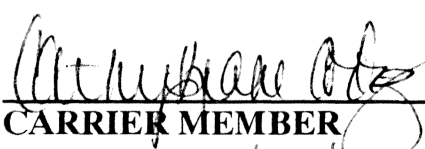
discipline issued to the Claimant must be removed from his record.

AWARD:

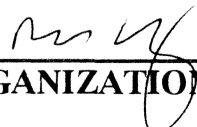
The claim is sustained.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER
DATED: 4/10/13



ORGANIZATION MEMBER
DATED: 6/10/13