

BEFORE PUBLIC LAW BOARD NO. 7078

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO, CENTRAL AND PACIFIC RAILROAD**

Case No. 1

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

1. The dismissal of Welder T.S. Kilbride for violation of USOR Rules 1000, 1001, and On Track Safety Rule 100 in connection with an incident resulting in a personal injury sustained by him on Tuesday, December 6, 2005 near Alden, Iowa is arbitrary, unjust, unwarranted and excessive (System File A021406.0/CCP-134-106-001 CCN).
2. As a consequence of the violation referred to in Part 1 above, on behalf of Mr. Kilbride, the Organization requests that the Carrier ' . . . rescind and remove the dismissal discipline from the Claimant's record, and that he be reinstated to service and made whole in accordance with Rule 33(i).'"

FINDINGS:

By letter dated December 7, 2005, the Claimant was advised to attend a formal hearing and investigation on charges relating to an incident involving a train/vehicle accident in which the Claimant sustained a personal injury. The investigation was conducted on January 12, 2006. By letter dated January 27, 2006, the Claimant was notified that as a result of the investigation and hearing, he had been found guilty of violating USOR Rules 1000, 1001, and On Track Safety Rule 100, and that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge the Claimant. The Carrier denied the claim.

The Carrier initially contends that the investigation was fair and impartial. The

Carrier asserts that at no time has the Organization raised any argument that the investigation was procedurally flawed.

The Carrier argues that the record is clear and undisputed that the Claimant violated the cited rules. The Claimant admitted the violations. The Carrier emphasizes that compliance with such rules absolutely is essential to ensure a safe work environment for employees, safety for the public, and to reduce the negative effects of accidents and incidents to the Carrier. The Carrier maintains that the collision at issue was the direct result of the Claimant's failure to comply with the cited rules.

The Carrier insists that these rules are not permissive. Moreover, the record leaves no question that the Claimant understood these rules and that he admittedly failed to comply with them. The Carrier argues that the fact that the Claimant's non-compliance was the sole cause of the accident was not refuted. The Claimant knew what was required to be in compliance, yet he did not comply on the day of this incident. The Carrier emphasizes that the Claimant did not offer any plausible argument or information that would mitigate his culpability.

The Carrier goes on to contend that based on the entire record, there can be no question that the Claimant violated the rules with which he was charged. Accordingly, the only remaining issue is the propriety of the discipline. The Carrier asserts that the record shows that the Claimant was using his work cell phone to talk with his girlfriend very near the time that the oncoming train crew was unsuccessfully attempting to contact the Claimant by radio to obtain instructions regarding GBO 3006, the Claimant's working limits. The Carrier points out that the Claimant was not forthright in his

testimony about these conversations, although he admitted that these calls took place.

The Carrier asserts that this circumstance, when coupled with the Claimant's failure to initiate the required GBO track protection, clearly demonstrates the Claimant's careless and negligent behavior.

The Carrier maintains that the Claimant's careless and negligent behavior resulted in an injury to the Claimant, a total loss of the Welding truck, damage to the locomotive, and delay to the train. The Carrier points out that the total cost for all involved exceed a quarter of a million dollars. The Carrier suggests that it is miraculous that the Claimant was only injured, and not killed. The Claimant's extreme carelessness and gross negligence simply cannot be overlooked. The Carrier argues that there is abundant arbitral precedent that in cases where an egregious violation of the rules is proven, the Carrier's decision to dismiss must be upheld.

The Carrier then argues that although no remedy is due in accordance with the clear language of the Agreement, the remedy sought by the Organization here clearly is excessive. The Carrier points out that the Claimant progressed a claim against the Carrier under the FELA, which was settled and the Claimant was paid. Based on the language of the release that the Claimant signed as part of that settlement, the instant claim is forfeit and the Carrier has been released from any obligation regarding this claim. If the Claimant nevertheless is awarded compensation that amount must be offset by the amount of the FELA settlement, as well as any interim earnings.

The Carrier ultimately contends that the instant claim must be denied in its entirety.

The Organization initially contends that the instant incident was the first blemish in the Claimant's history with the Carrier. The Organization asserts that discharge for a first offense cannot be viewed as progressive in nature. The Organization argues that prior to this incident, the Claimant had established himself as a valued employee, and he deserves a chance to once again prove himself a valued employee.

Citing a number of Board Awards, the Organization emphasizes that the purpose of discipline is to rehabilitate, correct, and guide employees. The Organization insists that the Claimant did not willfully disregard Carrier rules or practices, and his testimony reveals simple confusion. The Organization maintains that the Claimant's dismissal serves no purpose other than punishment.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

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

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has met its burden of proof that the Claimant was guilty of violating several Carrier rules on December 6, 2005, when the Claimant was in his truck at the time of a collision. The Claimant admitted at the hearing that he failed to comply with Rule 1000 and Rule 1001.

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

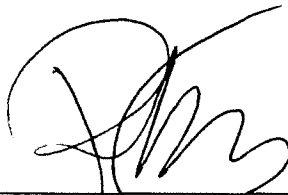
support the guilty finding, we next turn our attention to the type of discipline imposed.

This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

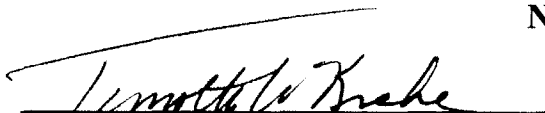
Given the short-term employment of the Claimant and the very serious nature of the rule violations of which he has been properly found guilty, this Board cannot find that the Carrier's action in terminating his employment was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

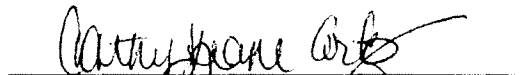
The claim is denied.



PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER

DATED: June 1, 2009


CARRIER MEMBER

DATED: 6/1/09