

BEFORE PUBLIC LAW BOARD NO. 6043

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

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 73

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

1. The Carrier violated the Agreement when it recovered and refused to allow Claimant T. Hubbard the holiday pay (Good Friday) he had received for April 10, 2009 (System File C09-06-09/IC-BMWE-2009-00018).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Hubbard shall now be compensated for eight (8) hours’ pay at his respective straight time rate of pay.”

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties’ collective bargaining agreement when it recovered previously paid holiday pay for the 2009 Good Friday holiday from the Grievant. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained because the Carrier’s actions violated the Agreement’s holiday pay provisions, because the Claimant was entitled to the holiday pay at issue in accordance with the holiday and vacation provisions of the Agreement, and because the Carrier has failed to provide any valid support for its failure to comply with the clear terms of the Agreement. The Carrier contends that the instant claim should be denied because the Organization has failed to meet its burden of proof, because the Claimant was not eligible for holiday pay under

Rule 23, and because no remedy is due the Claimant in that there was no violation of the Agreement.

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

This Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Carrier violated the Agreement because it is clear that the Claimant was eligible for holiday pay pursuant to Rule 23 and the Carrier failed to pay him. Rule 23(f) states the following:

A regularly assigned employee shall qualify for the holiday pay provided in Paragraph (a) hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days.

Except as provided in the following paragraph, all others for whom holiday pay is provided in Paragraph (a) hereof shall qualify for such holiday pay if on the day preceding and the day following the holiday, they satisfy one or the other of the following conditions:

- (1) Compensation for service paid by the Carrier is credited; or
- (2) Such employee is available for service.

The major issue in this case is whether or not the vacation day that the Claimant took during the Good Friday holiday can be considered "compensation for service paid by the Carrier." The Claimant clearly was paid for that vacation day and, therefore, the question is whether or not the Claimant was then eligible for the holiday pay.

The Organization presented a number of awards in support of its position dating back to the 1960s. It is evident from those awards that over the past five decades, the Third Division has consistently held that a vacation day constitutes compensation for

service as is set forth in Rule 23(f). One of those awards even distinguishes between contract language that reads “renders compensated service” and contract language that reads “compensated service.” See Third Division Award 14674. Since the language reads “compensation for service,” there is no requirement that the Claimant actually work on the day after the holiday in order to qualify for holiday pay. Moreover, the holiday pay rule language set forth in the Agreement specifically excludes “compensation paid under sick-leave rules or practices” being considered compensation for purposes of the rule. No such exclusion is in the rule relating to vacation compensation. See Third Division Award 40430. Based on all of the previous awards, this Board must find that the Claimant in this case clearly was compensated for service in accordance with Rule 23. See Third Division Awards 40435, 40430, 40429, and 37989. Therefore, the Claimant is entitled to his holiday pay.

As the Third Division stated clearly in Award 37989, “the Board in the instant case can find no evidence that the parties intended to exclude vacation pay from the compensation qualifying an employee for holiday pay under Section 3.”

For all the above reasons, the claim must be sustained.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member


CARRIER MEMBER

DATED: 4/26/11


ORGANIZATION MEMBER

DATED: April 26, 2011

BEFORE PUBLIC LAW BOARD NO. 6043

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

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 77

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 G, Drugs and Alcohol, CN US Region LIFE Safety Rules and Recommended Practices, Section II, Core Safety Rules, Rights and Responsibilities #1i and CN US Region LIFE Safety Rules and Recommended Practices Section IV, Resources, Substance and Alcohol Free Environment (SAFE) Policy and Guidelines in connection with his alleged possession of illegal drugs and participating in the sale of those drugs in Ponchatoula, Louisiana on June 15, 2009 and CN US Region LIFE Safety Rules and Recommended Practices, Section II, Core Safety Rules, Substance Abuse #2 by failing to comply with the SAFE Policy and US Operating Rule 100, Rules, Regulations and Instructions and CN US Region LIFE Safety Rules and Recommended Practices, Section II, Core Safety Rules, Rights and Responsibilities #1h for violating the other rules stated herein is arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File A09-09-18/IC-BMWE-2009-00076).
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 July 3, 2009, the Claimant was directed to attend a formal hearing and investigation to determine whether he had violated any Carrier rules, instruction, or policies when he allegedly was found in possession of illegal drugs and/or controlled substances on June 15, 2009. The investigation was conducted, as scheduled, 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 of violating certain U.S. Operating Rules and

LIFE Safety Rules and Policies, and that he 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 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 issue a notice of hearing to the Claimant in accordance with Rule 33(a), because the Carrier failed to meet its burden of proof as to the charges leveled against the Claimant, and because the penalty of dismissal was unwarranted.

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 that the Carrier did fail to live up to the requirements of Rule 33(a) and provide a Notice of Investigation within ten days after the Carrier became aware of the Claimant's arrest. The record reveals that the Claimant failed to report for work on June 16 and 17, 2009. The Claimant contacted his supervisor, Ray Neu, on June 16, 2009, and stated that he had been arrested and was incarcerated. The Claimant was later released from jail on June 17, 2009, and he went to Mr. Neu's office to explain the circumstances of his arrest and incarceration. The Carrier held the Claimant out of service pending investigation from June 17, 2009.

The record further reveals that the Carrier failed to issue a Notice of Hearing until July 3, 2009, which was eighteen days after the Carrier first became aware of the Claimant's arrest.

Rule 33(a) states, in part, the following:

Employees shall not be disciplined or dismissed until after a fair and impartial hearing. Notice of such hearing, stating the known circumstances involved, shall be given to the employee in writing within ten (10) days of the date that knowledge of the alleged offense has been received by the Engineering Superintendent or the employee's authorized representative.

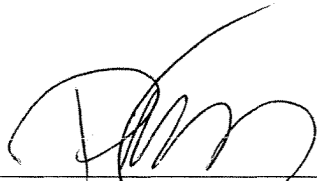
The Carrier received knowledge of the incident on June 16, 2009, and failed to take any action for eighteen days. That procedural violation on the part of the Carrier violated Rule 33(a).

In addition, it should be pointed out that the Carrier failed to prove that the Claimant engaged in any illegal activity. Throughout the hearing, the Carrier was relying only on information regarding the arrest. There is no real evidence that the Claimant acted in violation of the Carrier's rules.

For all of the above reasons, the claim must be sustained.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member


CARRIER MEMBER

DATED: June 6, 2011


ORGANIZATION MEMBER

DATED: June 6, 2011

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.

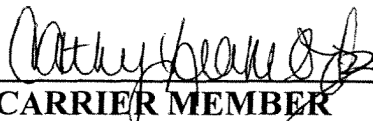
This Board has ruled on several occasions in the past that just because an accident occurs, does not necessarily mean that a Claimant was acting in violation of the rules. That principle applies to this case here. In order for the Carrier to have the right to impose discipline, it must show that the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