

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 86

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

1. The thirty (30) day suspension and one (1) year of disqualification as Employee in Charge (EIC) imposed upon Track Foreman M. Fulwiley for violation of On Track Safety Rules 100, 300, 401 and 804, USOR General Rule 100, Life U.S. Safety Rules Section III and PPE-E-22 in connection with failure to wear personal protective equipment (safety glasses) on September 18, 2009 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File A 09 11 25/IC-BMWED-2009-00094).
2. As a consequence of the violation referenced in Part 1 above, Mr. Fulwiley shall be granted remedy in accordance with Rule 33(i) of the Agreement.”

FINDINGS:

By notice dated September 18, 2009, and corrected by notice dated September 21, 2009, the Claimant was directed to attend a formal investigation and hearing to ascertain the facts and determine his responsibility, if any, in connection with an incident during which the Claimant allegedly had violated Carrier rules by failing to wear safety glasses. The hearing was conducted, as scheduled, on September 22, 2009. By letter dated October 5, 2009, the Claimant was notified that as a result of the hearing, he had been found guilty as charged, that he was being issued a thirty-day suspension, and that he was being disqualified from any employee-in-charge (EIC) position for a period of one year. The Organization subsequently filed a claim on the Claimant’s behalf, 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 in the record establishes that the Claimant was guilty as charged, because the Claimant received a fair and impartial investigation, and because the discipline imposed was warranted. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its burden of proving by sufficient evidence that a violation occurred, because the record shows that the Claimant was in compliance with all relevant rules and regulations, and because the discipline imposed was arbitrary, capricious, unwarranted, and without merit.

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

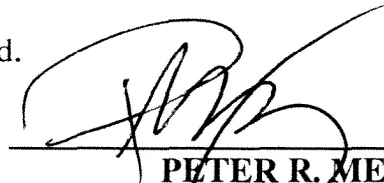
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier rules and regulations when he failed to wear his safety glasses on September 18, 2009. The record reveals that the Claimant only put his safety glasses on, which had been in his hand, when he realized that he was being observed by supervisors. Two Carrier supervisors had reported that he was not wearing safety glasses at the time that he was observed on the property.

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 issued a thirty-day suspension plus a disqualification for a period of one year. Given the seriousness of the wrongdoing, this Board cannot find that the disciplinary action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: August 24, 2012



ORGANIZATION MEMBER

DATED: August 24, 2012