

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 87

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

1. The dismissal of Track Foreman S.W. Taylor for violation of USOR General Rules A, G, H, L, P, USOR Rule 100, US L.I.F.E. safety rules and recommended practices – section ii: core safety rules, rights and responsibilities #1, F and H, substance abuse #2, US L.I.F.E. safety rules and recommended practices – section iii: engineering rules, recommended practices and ppe, E-22 personal protective equipment and clothing, #4 head protection and CN US Region L.I.F.E. safety rules and recommended practices – section iv: resources, substance abuse and alcohol free environment (SAFE) Policy and guidelines in connection with alleged use of a cell phone while operating a machine, not wearing personal protective equipment and failing a breath alcohol test on September 28, 2009 is based on unproved charges, unjust, unwarranted and in violation of the Agreement (System File A 09 12 08/IC-BMWED-2009-00095).
2. As a consequence of the violation referenced in Part 1 above, Mr. Taylor shall be granted the remedy in accordance with Rule 33(i) of the Agreement.”

FINDINGS:

By notice dated September 28, 2009, and corrected by notice dated October 1, 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 incidents during which the Claimant allegedly had violated Carrier rules by sleeping on his machine, using his cell phone while operating a machine, striking an Assistant Track Foreman and knocking his hard hat off his head, failing to wear personal protective equipment, and/or

failing a breath alcohol test. The hearing was conducted, as scheduled, on October 2, 2009. By letter dated October 19, 2009, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and that he was being dismissed from the Carrier's service. 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 and the Claimant's own admissions establish that the Claimant was guilty of all the charges except for sleeping on duty, 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 had no basis to believe that the Claimant was intoxicated and it incorrectly required the Claimant to submit to a drug and alcohol test, because the obvious connection between the Claimant's drinking and the alleged violations reveal that the Claimant's inappropriate behavior can be remedied, and because the discipline imposed therefore was disparate, unwarranted, unnecessary 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 several Carrier rules when he was using a cell phone while operating a machine; struck an assistant foreman, knocking the hard hat off of his head; he was not wearing his personal protective equipment; and he did fail a blood alcohol test on

September 28, 2009. The Claimant admitted that he knocked the hard hat off of the head of his assistant foreman. He also admitted that he tested positive for alcohol, as well as failing to wear protective equipment and using his cell phone on the job.

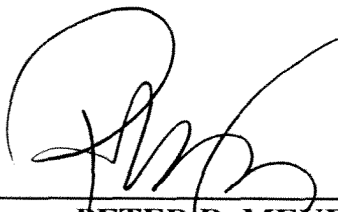
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was found guilty of some very serious offenses. However, it was clear at the oral argument in this case that the Claimant had an "epiphany" after having gone to Alcoholics Anonymous. It is apparent that the Claimant will be able to continue to work for the Carrier as long as he remains sober and continues with Alcoholics Anonymous. Therefore, we find that the Carrier acted arbitrarily and capriciously when it terminated the Claimant's employment. We order that the Claimant be reinstated to employment without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension. Moreover, the Claimant is being returned to work on a last-chance basis. It should be made clear to the Claimant that any more serious violation of Carrier rules will lead to his dismissal.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension. Moreover, the Claimant is being returned to work on a last-chance basis. Any future serious rule violations by the Claimant shall

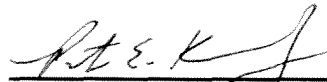
lead to his dismissal.



PETER R. MEYERS
Neutral Member

CARRIER MEMBER

DATED: August 24, 2012



ORGANIZATION MEMBER

DATED: August 24, 2012