

**BEFORE PUBLIC LAW BOARD NO. 6043**

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

**Case No. 88**

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

1. The twenty (20) day suspension imposed upon Track Foreman M. Fulwiley for violation of USOR General Rules C and T in connection with sleeping during a safety briefing on November 25, 2009 is based upon unproven charges, unjust, unwarranted and in violation of the Agreement (System File A100106/IC-BMWED-2010-00001).
2. As a consequence of the violation referenced in Part 1 above, Mr. Fulwiley shall be granted the remedy in accordance with Rule 33(i) of the Agreement.”

**FINDINGS:**

By notice dated November 25, 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 sleeping during a safety briefing. The hearing was conducted, after a postponement, on December 3, 2009. By letter dated December 10, 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 twenty-day suspension. 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 Claimant improperly was sent home on the date in question, because the Carrier failed to meet its burden of proving that the Claimant was sleeping or failed to be alert and attentive during the morning briefing, and because the discipline imposed was arbitrary, capricious, inappropriate, without merit, and baseless under the parties' 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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of sleeping during a safety briefing on November 25, 2009. The record reveals that the Claimant was observed by the track supervisor with his eyes closed in a slouched position and he was not alert and attentive to his duties during a safety briefing. The Claimant's actions clearly violated Rule C, which requires an employee to be alert and attentive when performing his or her duties.

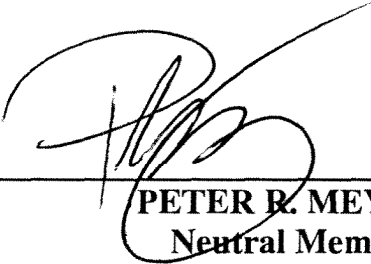
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The Claimant in this case was issued a twenty-day suspension for his wrongdoing.

Given the seriousness of the offense which often can lead to discharge, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**CARRIER MEMBER**

DATED: August 24, 2012

  
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**ORGANIZATION MEMBER**

DATED: August 24, 2012