

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 89

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

1. The dismissal of Track Foreman M. Fulwiley for violation of USOR General Rules C and T in connection with becoming quarrelsome in a conversation with his supervisor on November 25, 2009 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File A100202/IC-BMWED-2009-00003).
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 becoming quarrelsome and argumentative in a conversation with his supervisor. The hearing was conducted, after a postponement, on December 3, 2009. By letter dated December 18, 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 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 substantial evidence that the Claimant was in violation of the cited rules, because the hearing officer's detrimental conduct deprived the Claimant of a fair and impartial investigation, 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 became quarrelsome and argumentative in conversations with Supervisor Jones. The record reveals that the Claimant screamed and yelled at his supervisor and failed to leave the property when he was instructed to do so.

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.

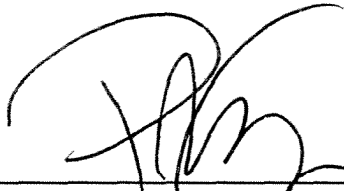
The Claimant in this case was terminated from his employment after having been found guilty of the wrongdoing. Although the Claimant acted very badly in a way that

often does lead to discharge, this Board finds that the Carrier acted unreasonably, arbitrarily, and capriciously when it terminated the Claimant.

Therefore, this Board orders that the Claimant 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 shall be brought back to work on a last-chance basis. Any future serious rule violations on his part shall 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. The Claimant shall be brought back to work on a last-chance basis. Any future serious rule violations on the Claimant's part shall lead to his dismissal.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: August 24, 2012



ORGANIZATION MEMBER

DATED: August 24, 2012