

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CN – WISCONSIN CENTRAL RAILROAD**

Case No. 42

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

1. The discipline of a ten (10) day suspension and disqualification of all machine operator positions for twelve (12) months imposed upon Machine Operator Jessica Killingham for the alleged violation of USOR General Rules A and C, LIFE US Safety Rules Engineering Section II, 7 and 13 and On Track Safety Rules Appendix F in connection with her failure to properly inspect the anchor applicator machine on October 8, 2008 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier’s File WC-BMWE-2008-00024).
2. As a consequence of the violation referred to in Part 1 above, Ms. Killingham is entitled to the full remedy pursuant to Rule 31(I) of the Collective Bargaining Agreement.”

FINDINGS:

By letter dated October 24, 2008, the Claimant was directed to attend a formal hearing and investigation to ascertain the facts and determine whether the Claimant had violated any Carrier rules, instructions, and/or policies in connection with an October 8, 2006, incident in which the Claimant allegedly failed to properly inspect an anchor applicator machine. The investigation was conducted, as scheduled, on November 10, 2008. By letter dated November 25, 2008, the Claimant was notified that as a result of the hearing, she had been found guilty of violating USOR General Rules A and C, LIFE US Safety Rules Engineering Section II, 7 and 13 and On Track Safety Rules Appendix F, and that she was being assessed a ten-day suspension and a twelve-month

disqualification from all machine operator positions. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline the Claimant. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the evidentiary record establishes that the Claimant is guilty as charged, because the Claimant was afforded a fair and impartial hearing, and because the discipline imposed was not harsh, arbitrary, or an abuse of discretion. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to prove the Claimant responsible for the incident at issue, because there is no basis for the conclusion that there was a violation simply because an accident occurred, and because the Carrier's case against the Claimant was based on nothing more than speculation, assumption, and supposition.

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 A and C, as well as other safety rules, when she failed to properly inspect the anchor applicator machine on October 8, 2008. Therefore, the claim must be denied.

The record reveals that the Claimant was working as a machine operator on the date in question. This Board finds that the Carrier proved that the Claimant failed to properly inspect the hydraulic hose for damage or defective conditions. That failure led

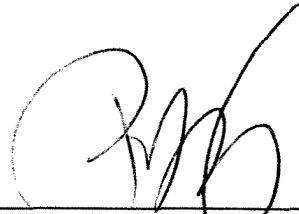
to a burst in the hose and a subsequent fire. A follow-up inspection of that hose revealed that there was significant wear in the hose at the point of the rupture. Although the Claimant testified that she performed a daily inspection of the machine, the evidence that was uncovered after the incident demonstrated that that hose had some defects to it prior to the time of the incident. Those defects should have been discovered by the Claimant. There was a wear mark about five inches long where the outer coating had been worn away, which was exposing the reinforcing wire. That wear mark was the place where the hose eventually burst.

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.

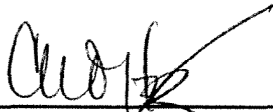
The Claimant in this case was issued a ten-day suspension, with a one-year disqualification as a machine operator. The record reveals that the Claimant had previously received a thirty-day suspension and removal from foreman training qualification for two years as a result of her occupying a main line track outside of track protection. Given that previous disciplinary background, this Board cannot find that the Carrier's imposition of a relatively lenient ten-day suspension and disqualification for one year was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.

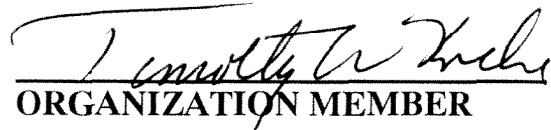


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: Sept 12, 2011



ORGANIZATION MEMBER

DATED: September 12, 2011