

BEFORE PUBLIC LAW BOARD NO. 6915

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

Case No. 44

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

1. The dismissal of Claimant D. Eberhardy for his alleged violation of USOR 100; OTS Rule 804; 3 Welding Procedures within the Track Welders Manual, Match Marking, 40’ distance during the weld tap in cold weather, and checking the adjustment of the torch height at least once during the day, in connection with an on duty injury on Thursday, January 29, 2009 at approximately 1330 hours on the Main Track at Mile Post 189.4 on the Neenah Subdivision near Neenah, Wisconsin is arbitrary, unwarranted, based on unproven charges, and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Eberhardy is entitled to the full remedy detailed in Rule 31(I) of the Agreement, effective July 1, 2004 (Carrier’s File WC-BMWE-2009-00013).”

FINDINGS:

By letter dated February 2, 2009, 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 a January 29, 2009, incident in which the Claimant sustained an on-duty injury. The investigation was conducted, after several postponements, on March 4, 2009. By letter dated March 20, 2008, the Claimant was notified that as a result of the hearing, he had been found guilty of violating USOR 100; OTS Rule 804; 3 Welding Procedures within the Track Welders Manual, Match Marking, which required a 40’ distance during the weld tap in cold weather, and also required the checking of the adjustment of the torch height at least once

during the day, and that he was being dismissed from the Carrier's service. 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 provide the Claimant with a fair and impartial investigation, because the Carrier failed to prove all of the charges leveled against the Claimant, and because the discipline imposed upon the Claimant was arbitrary and unwarranted.

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

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. A thorough review of the transcript makes it clear that the Claimant's due process rights were protected throughout the proceeding.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record that the Claimant was guilty of violating several Carrier rules when he remained much too close to a weld tap in cold weather. The record reveals that the Claimant had completed and passed his welder's training and had been advised of the rules. The Claimant was positioned approximately ten feet from the weld, which is much too close. There was an explosion and injuries occurred. The Claimant

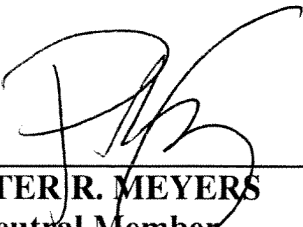
admitted that he had received copies of the manuals but stated that he never looked at them. It is fundamental that employees who are qualified must keep up with the rules that apply to their assignments. The Claimant continually blamed everything on a fellow employee and refused to take any responsibility for his error in judgment.

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 record in this case reveals that the Claimant had only been an employee of the Carrier for eight months at the time of the incident. The Claimant had been properly trained, but he failed to live up to the requirements of his job. Given the Claimant's short term of employment, 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.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: Sept 12, 2011



ORGANIZATION MEMBER

DATED: September 12, 2011