

BEFORE PUBLIC LAW BOARD NO. 6915

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

Case No. 45

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

1. The discipline imposed upon Claimant Tom Dakin in the form of a thirty (30) day unpaid suspension, served from Saturday, March 21, 2009 until Monday, April 20, 2009, for the 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 sustained by Welder Helper D. Eberhardy 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 (Carrier’s File WC-BMWE-2009-00014).
2. As a consequence of the violation referred to in Part 1 above, Mr. Dakin is entitled to the full remedy detailed in Rule 31(I) of the Agreement, effective July 1, 2004.”

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 another employee sustained an on-duty injury. The investigation was conducted, after several postponements, on March 4, 2009. By letter dated March 20, 2009, 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, 40’ distance during the weld tap in cold weather, and checking the adjustment of the torch height at least once during the day, and that he was

being suspended for thirty calendar days. 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. The Claimant was guaranteed all of his due process rights 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 to support the finding that the Claimant was guilty of violating several safety rules when he failed to keep a forty-foot distance during the weld tap and he failed to properly check the adjustment of the torch. The Claimant admitted that both he and another employee were standing approximately ten feet away from the weld at the time of the incident. In addition, the Claimant made some

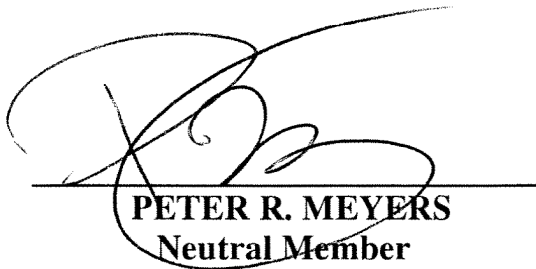
operational errors prior to completing the weld. The Claimant was asked whether or not he complied with the rule, and he stated that he did understand the rule and he admitted that he did not comply with it.

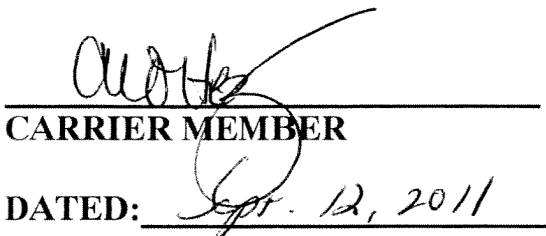
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

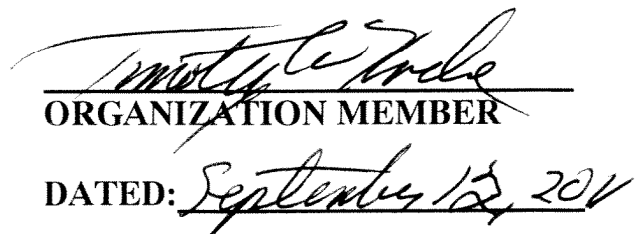
The Claimant in this case was issued a thirty-day disciplinary suspension. The Carrier recognized that the Claimant has been employed for over thirty-three years prior to the incident. However, given the seriousness of the wrongdoing, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the thirty-day suspension to the Claimant. Therefore, the claim will be denied.

AWARD:

The claim is denied.


PETER R. MEYERS
Neutral Member


CARRIER MEMBER
DATED: Sept. 12, 2011


ORGANIZATION MEMBER
DATED: September 12, 2011