

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE**

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 106

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

1. The Carrier’s discipline in the form of a ten (10) day actual suspension from service (Wednesday, April 27, 2011 through Tuesday, May 10, 2011) and a twenty (20) day deferred suspension for a year (Wednesday, April 27, 2011 through Thursday, April 26, 2012) imposed upon Claimant M. Page, Sr., for his alleged violation of USOR General Rule I – Duty Reporting or Absence, in connection with his alleged falsification of time and alleged giving misinformation to his supervisor for his work performance and whereabouts between April 1, 2011 until April 26, 2011, is on the basis of unproven charges and was entirely improper, arbitrary, and unwarranted (System File C110602/IC-BMWED-2011-00077).
2. As a consequence of the Carrier’s violation described in Part 1 above, Claimant Page is entitled to the remedy prescribed in Rule 33(i) of the Agreement.”

FINDINGS:

By notice dated April 26, 2011, the Claimant was directed to attend a formal investigation and hearing to develop the facts and determine his responsibility, if any, in connection with allegations that the Claimant had violated Carrier rules, regulations, and/or policies by falsifying time and giving misinformation to his supervisor about his work performed and his whereabouts between April 1 and 26, 2011. The investigation was conducted, as scheduled, on April 29, 2011. By letter dated May 6, 2011, the Claimant was informed that as a result of the investigation, he had been found guilty as charged and was being assessed a ten-day actual suspension and twenty-day deferred

suspension. The Organization subsequently filed the instant claim on behalf of the Claimant, 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 substantial evidence in the record proves that the Claimant was guilty as charged, because the Claimant was afforded a fair and impartial hearing, 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 prove the charges leveled against the Claimant, because the Carrier failed to meet the heightened burden of proof that applies in this case, and because discipline cannot stand when it is excessive, capricious, improper, and unwarranted.

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 the Carrier has failed to meet its burden of proof that the Claimant violated Carrier rules by falsifying time and giving misinformation to his supervisor about the work he performed between April 1, 2011, and April 26, 2011. It is admittedly confusing as one peruses the transcript, but it is clear that the Claimant was not responsible for giving false information to be paid. He was not responsible for inputting the information for his payment. The payroll system appears to be somewhat confusing.


This Claimant has been employed by the Carrier for ten years and apparently without incident. The Claimant admitted that he was at the hotel in the middle of the day,

but if that constituted a violation of Carrier rules is not clear from this record.

Since the Carrier bears the burden of proof in all discipline cases, this Board must find that the Carrier has not met that burden and the claim must be sustained.

AWARD:

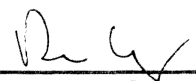
The claim is sustained.



PETER R. MEYERS
Neutral Member

CARRIER MEMBER

DATED: 7/31/13



ORGANIZATION MEMBER

DATED: 7/31/13