

BEFORE PUBLIC LAW BOARD NO. 6043

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CANADIAN NATIONAL/ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 11

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

- (1) The thirty-day suspension assessed Ballast Regulator Operator W. Gaines, Jr., for his alleged unauthorized absence on February 14, 15, and 16, 2000, was without just and sufficient cause. (System File Gaines A041100/IC-134-00-18.)
- (2) Ballast Regulator Operator W. Gaines, Jr., shall now be allowed the remedy prescribed in Rule 33(i).

FINDINGS:

Claimant W. Gaines, Jr., was employed by the Carrier as a ballast regulator operator at the time of this claim.

On February 25, 2000, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility, if any, in connection with his allegedly absenting himself without proper authority from his position as machine operator on Gang 4430 on the dates of February 14, 15, and 16, 2000.

After one postponement, the hearing took place on March 23, 2000. On April 11, 2000, the Carrier notified the Claimant that he had been found guilty of having violated Rule J of the Carrier's Maintenance of Way General Rules, and was being assessed discipline of a thirty-day suspension, commencing April 17, 2000.

The Organization filed a claim on behalf of the Claimant. The Carrier denied the claim.

The Carrier maintains that the Claimant was provided a fair and impartial hearing and that the Organization provided no evidence of misconduct by the hearing officer, let alone prejudicial misconduct. The Carrier argues that the Claimant did not have the right to absent himself from work without property authority on the dates in question. The Carrier contends that the Claimant admitted that he did not actually speak to a supervisor to request permission to be absent from work on the dates in question, but merely left a message. The Carrier claims that the Claimant returned to work on February 17, 2000, and made no attempt to discuss his absence with his supervisor but requested to be marked up for vacation for the days he was absent. The Carrier denied that this occurred. The Carrier contends that the discipline issued the Claimant was not harsh or excessive and was based not only on the case at issue but also on the Claimant's previous record with the Carrier, which includes a ten-day suspension in 1999 for the same violation. The Carrier asserts that the Claimant is a repeat offender and that the discipline is warranted.

The Organization maintains that the Claimant made attempts to contact the supervisor and that it was not the Claimant's fault that the Carrier's supervisor was not available to receive the calls when they were made. The Organization further argues that the Claimant was not afforded a fair and impartial hearing. The Organization maintains that the Claimant was prejudged in that the Carrier officer who presided at the investigation into the charges was also the one to render the decision of discipline. The Organization also claims that the Carrier failed to prove the charges leveled against the Claimant. The Organization asserts that the Claimant should not have been charged with

any offense nor suspended for thirty days and that the Carrier failed to show any intention by the Claimant to disregard the provisions of Rule J. The Organization contends that the Claimant did not deserve the thirty-day suspension under the circumstances present in this case. The Organization requests that the claim be sustained and the Claimant made whole.

The parties being unable to resolve the issues, 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.

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 being absent without authority beginning on February 14, 2000. The record reveals that when the Claimant returned to work on February 17, 2000, he made no attempt to discuss the absence and requested that he be marked up for vacation days on the days that he was off. That request was denied.

The record reveals that the rules require that employees not be absent unless they are authorized to do so. At the hearing, the Claimant admitted that he did not speak to his supervisor to obtain the appropriate permission to be off on the days requested. Clearly, the Claimant was guilty of violating the rules.

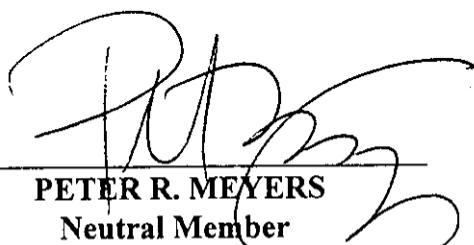
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action

to have been unreasonable, arbitrary, or capricious.

The record reveals that this Claimant had received a previous ten-day suspension for the same offense. Given the previous wrongdoing of this Claimant and the clear-cut violation of the same rules in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it imposed a thirty-day suspension on the Claimant in this case. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER



ORGANIZATION MEMBER

DATED: 6/29/01

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