

REC'D JUL 24 2013

**BEFORE PUBLIC LAW BOARD NO. 6043**

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

**and**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 129**

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

1. The Carrier’s dismissal of Claimant E. Brown for his alleged violation of USOR General Rule H – Furnishing Information and Conduct, for his alleged display of argumentative and/or quarrelsome behavior in connection with an incident involving employee S. Herring that occurred at approximately 0600 hours on Monday, June 6, 2011 at or near Mile Post 888.0 on the McComb Subdivision near Frenier, Louisiana, was arbitrary, excessive, disparate, and in violation of the Agreement (System File C110819/IC-BMWED-2011-00118).
2. As a consequence of the Carrier’s violation described in Part 1 above, Claimant Brown is entitled to the remedy prescribed in Rule 33(i) of the Agreement.”

**FINDINGS:**

By notice dated June 7, 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 a June 6, 2011, incident in which the Claimant allegedly had displayed argumentative and/or quarrelsome behavior. The investigation was conducted, as scheduled, on June 10, 2011. By letter dated June 29, 2011, the Claimant was informed that as a result of the investigation, he had been found guilty as charged and was being dismissed from the Carrier’s service. 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 Claimant was honest and forthright about his actions and sincerely apologized, because the Claimant is a long-term employee of the Carrier, because the Carrier's dismissal of the Claimant under these circumstances was not corrective but entirely arbitrary and excessive, and because the Carrier subjected the Claimant to disparately harsh treatment in that the other employee who was actively engaged in the incident at issue did not receive any discipline whatsoever.

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 Rule H when he displayed argumentative and quarrelsome behavior in connection with an incident with a fellow employee. The record reveals that the Claimant used vulgar language and argued with a fellow employee. The Claimant admitted that "it kind of got out of hand, as far as my language . . ." The Claimant also admitted that " . . . both of us were quarrelsome." Finally, the Claimant admitted that he was "guilty of cursing" and that "I hate it happened, ain't nothing I can do about 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 incurred two previous offenses involving violations of Operating Rule H for being argumentative and quarrelsome. The Claimant had previously been sent to anger management/conflict training. The Claimant apparently did not learn from his previous suspensions or from the training.

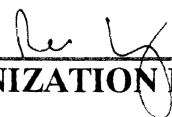
Given the wrongdoing of which the Claimant was properly found guilty in this case, coupled with the previous suspensions and failure to improve his behavior, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant in this case. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  
\_\_\_\_\_  
**PETER R. MEYERS**  
**Neutral Member**

  
\_\_\_\_\_  
**CARRIER MEMBER**  
**DATED:** 7/31/13

  
\_\_\_\_\_  
**ORGANIZATION MEMBER**  
**DATED:** 7/31/13