

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ILLINOIS CENTRAL RAILROAD**

Case No. 15

STATEMENT OF CLAIM:

Mr. J.E. Stephenson was improperly assessed a thirty (30) working day deferred suspension. Accordingly, Mr. Stephenson's record should be cleared.

FINDINGS:

At the time of the events leading to this claim, the Claimant was employed by the Carrier as a heavy machine operator.

On May 25, 2001, the Carrier conducted a formal investigation of charges that on April 25, 2001, the Claimant allegedly used a mirror or another similar object to reflect sunlight into the face of a fellow employee, in violation of Carrier Safety Rules. As a result of this investigation, the Claimant was found guilty and assess a thirty-day deferred suspension. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's imposition of discipline. The Carrier denied the claim.

The Carrier initially contends that the Claimant was afforded a fair and impartial hearing, and testimony proved that the Claimant was guilty of reflecting sunlight into the eyes of another employee. The Carrier maintains that despite the Organization's complaints that the witness, L.E. Keller, was not disciplined for insubordination, safety is of the utmost importance. The Carrier argues that whether or not Keller was disciplined is irrelevant to this claim.

As for the Organization's contention that the Claimant was not assessed

progressive discipline, the Carrier argues that the discipline at issue was neither harsh nor excessive, especially given the severity of the situation. The Carrier emphasizes that reflecting sunlight into a co-worker's eyes seriously compromises that employee's ability to safely perform his or her job. The Carrier argues that it must ensure that every employee is afforded the ability to perform his or her duties. The Carrier further points out that because the Claimant was assessed a deferred suspension, he will not be required to serve that suspension unless additional discipline is imposed upon him prior to June 6, 2002.

The Carrier ultimately contends that the instant claim is without merit and should be denied in its entirety.

The Organization initially contends that the Carrier failed to meet its burden of proof in this matter. The Organization asserts that the quantum of evidence necessary to substantiate any charge is more than a singular accusation by a fellow employee. The Organization maintains that the transcript does not contain any testimony from an eyewitness other than the accuser and the Claimant, and the Claimant unequivocally denied the accusations. The Organization asserts that the record does not contain any positive evidence that supports the Carrier's findings that the Claimant engaged in conduct inconsistent with the Carrier's philosophy.

The Organization maintains that innuendo and supposition are not substantial evidence of wrongdoing. The Organization argues that none of the other Carrier witnesses were able to confirm the allegation against the Claimant. The Organization points out that although one witness confirmed a single incident of reflected sunlight, the

origin of this reflection cannot be remotely connected to any action by the Claimant.

The Organization then argues that the transcript clearly reveals that the Claimant's accuser dislikes the Claimant considerably, and this indicates a personal motive for the accusation. The Organization maintains that the Carrier has discriminated against the Claimant, and erred considerably with regard to fairness and impartiality, by crediting such an accusation over the Claimant's outright denial. The Organization points out that not only were the accusations adolescent, at best, but they were completely unsubstantiated by any competent witnesses. The Organization contends that there was no probative evidence to support the Carrier's findings.

The Organization goes on to assert that the Carrier violated the Claimant's due process right to a fair and impartial hearing when it failed to enforce its rules with reasonable uniformity. The Organization points out that the record demonstrates that Track Supervisor J.E. Tuckett instructed both the Claimant and his accuser, L.E. Keller, to "cease and desist." The Organization maintains that Keller thereafter insubordinately continued with his accusations, and then presented Tuckett with a letter of complaint after the incidents at issue seemingly had ended. This unsubstantiated letter of accusation culminated in the inappropriate discipline of the Claimant. The Organization argues that the Carrier's failure to either investigate or discipline Keller's insubordinate conduct unquestionably confirms that the Carrier acted in an unreasonable, arbitrary, capricious, and discriminatory manner by discriminatorily and disproportionately applying its rules. The Carrier's assessment of discipline in this case violated the parties' Agreement. Moreover, the Organization contends that by imposing discipline upon the Claimant

based upon unsubstantiated allegations, when compared with its failure to take any action whatsoever against Keller for insubordination, the Carrier subjected the Claimant to disparate treatment.

The Organization further maintains that because the Claimant's record is devoid of any previous discipline during his twenty-two years of service with the Carrier, the Claimant should have been given the benefit of progressive discipline. The Organization asserts that the discipline imposed upon the Claimant cannot be allowed to stand in light of the Carrier's failure to show that it previously informed and warned the Claimant that reflecting sunlight into the face of fellow employees would subject him to discipline. The Organization argues that a thirty-day suspension, even if deferred for the present, represents a degree of discipline that ordinarily applies to a second- or third-time offender.

The Organization ultimately contends that the instant claim should be sustained, and the Claimant's record cleared of the charge.

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 safety rules by reflecting sunlight into the face of a fellow employee. By acting in such a fashion, the Claimant subjected himself to disciplinary action.

Once this Board has determined that there is sufficient evidence in the record to

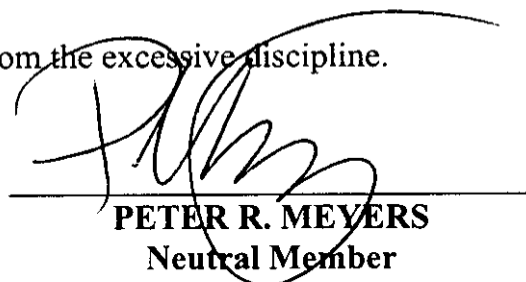
support the guilty finding, we next turn our attention to the type of discipline imposed.

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-working-day deferred suspension. Given his twenty-two years of service with a clean record, this Board finds that that type of discipline was excessive for this minor offense. Therefore, we order that the thirty-working-day deferred suspension be reduced to a written warning and the Claimant be made whole for any losses resulting from the suspension. This Board believes that for a twenty-two year employee, a written warning would have been sufficient discipline to inform the Claimant that his behavior was improper.

AWARD:

The claim is sustained in part and denied in part. The thirty-working-day deferred suspension is hereby reduced to a written warning and the Claimant shall be made whole for any losses resulting from the excessive discipline.


PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER

DATED: 5-21-03


CARRIER MEMBER

DATED: 5/21/03

*I dissent to the view that
this offense is "minor."*
