

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 16

STATEMENT OF CLAIM:

The twenty working day suspension issued to Mr. R.L. Jones for alleged violation of Illinois Central Maintenance of Way Rule C and General Rule C was arbitrary, unwarranted, disparate, in violation of the current working agreement, and in violation of the Claimant's due process rights. Accordingly, the Claimant should be made whole.

FINDINGS:

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

On January 25, 2002, the Carrier conducted a formal investigation to determine the Claimant's responsibility, if any, for an injury that he sustained at 1210 hours on Tuesday, January 8, 2002, near the toolhouse at Woodcrest Shops. As a result of this investigation, the Claimant was found guilty of violating Carrier's Maintenance of Way Rule C and General Rule C, and the Carrier imposed a twenty working day suspension upon the Claimant. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to suspend the Claimant. The Carrier denied the claim.

The Carrier initially contends that the investigation clearly demonstrated that the Claimant was in violation of the Carrier's rules. The Carrier further emphasizes that the investigation transcript proves that the Claimant received a fair and impartial hearing.

The Carrier maintains that there is no evidence of misconduct by the hearing officer. The Carrier argues that based upon the severity of the offense, the discipline was warranted. The Carrier ultimately contends that the claim should be denied in its entirety.

The Organization initially contends that the Carrier failed to meet its burden of proof in this matter. The record of the investigation is merely a summary of discussions between those present at the hearing. The Organization argues that the record does not contain any positive evidence that supports the Carrier's findings that the Claimant allegedly engaged in conduct that was inconsistent with the Carrier's philosophy. None of the Carrier's witnesses were able to confirm the allegations against the Claimant; the Organization emphasizes that innuendo and supposition are not substantial evidence of wrongdoing. The Organization maintains that the record actually contains considerable evidence that the Claimant did, in fact, properly perform his duties as a trackman. The Organization asserts that the charges against him were, at best, ridiculous, and they were without any substantiation or corroborative testimony. The Organization contends that because there was no probative evidence to support the Carrier's findings, the Carrier failed to meet its burden of proof.

The Organization then argues that the Carrier violated the Claimant's due process right to a fair and impartial hearing. The Organization asserts that Office Engineer Crader, who was both the Charging Officer and the Hearing Officer, and Engineering Superintendent Kelley, who assessed the discipline in this matter, prejudged the Claimant.

The Organization contends that the record demonstrates that Crader interrupted both testimony and the statements of the Claimant's representative. Because the Carrier violated the Claimant's due process rights, the Organization maintains that the Carrier's decision to suspend the Claimant for twenty working days should be rescinded.

The Organization further asserts that the Carrier failed to present any credible evidence in support of the charges leveled against the Claimant. The Organization emphasizes that the discipline imposed in this case was arbitrary and capricious, so it should not be allowed to stand. The Organization emphasizes that the record shows that the Claimant should not have been charged with any offense, nor should he have been suspended from service in this instance. The Carrier failed to show that the Claimant intended to disregard the rules.

The Organization ultimately contends that the instant claim should be sustained and the Claimant made whole.

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.

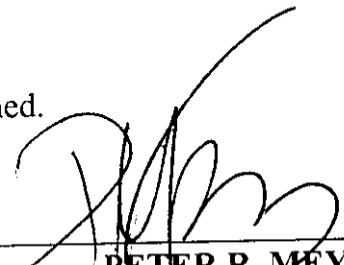
This Board has reviewed the evidence and testimony in this case and we find that the Carrier has failed to meet its burden of proof that the Claimant acted in violation of General Rule C when he stepped out of his truck and slipped on the ice on January 8, 2002. There is simply no evidence that the Claimant acted in a careless or negligent

fashion and clearly did not act in willful disregard for his own safety.

It is fundamental that the Carrier must show with sufficient evidence that the Claimant acted in violation of the rules in order to sustain discipline. It may be that the Claimant was injured, but that does not necessarily mean that he acted in such a fashion that the Carrier has a right to impose discipline upon him. Given the state of this record, where it is clear that the Claimant was simply stepping out of a truck and slipped onto ice that was covered with water, this Board cannot find that the Claimant acted in violation of the Carrier rules or that the Claimant was deserving of any discipline whatsoever. For all of the above reasons, the claim must be sustained.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 10-27-03



CARRIER MEMBER

DATED: 10/27/03