

BEFORE PUBLIC LAW BOARD NO. 6043

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

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 180

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

1. The suspension and disqualification of Claimant R. Taylor for the alleged violation of USOR General Rule C – Alert and Attentive, USOR General Rule D – Reporting Injuries and Defects and Engineering Track Standards TS 4.0 – Ballasting, Surfacing and Lining when he allegedly failed to calibrate the Mark IV Tamper and ensure correct track geometry after completing surfacing was arbitrary, excessive and in violation of the Agreement (System File A12294/IC-BMWED-2012-00025 ICE).
2. As a consequence of the violation referenced in Part 1 above, Mr. R. Taylor is entitled to the full remedy detailed in Rule 33(i) of the Agreement.”

FINDINGS:

By notice dated February 14, 2012, the Claimant was directed to attend a formal investigation and hearing to develop the facts and determine his responsibility, if any, in connection with incidents on October 3, October 4, November 11, December 5, and December 18, 2011, in which the Claimant allegedly failed to calibrate and/or ensure correct track geometry with respect to his March IV Tamper, resulting in damage to track at multiple locations. The investigation was conducted, after a postponement, on February 24, 2012. By letter dated March 1, 2012, 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 deferred suspension and a disqualification from operating a mechanized pulling tamper. 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 there is no evidence proving that the Claimant was guilty of the charges, and because the Claimant is entitled to the requested remedy.

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. The record reveals that the Claimant was afforded a proper hearing and all of his due process rights were protected.


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 failing to perform his duties on the dates in question. The record reveals that the Claimant had performed the work on the area in question and failed to properly check the level of the tracks. Defects were found by the manager who cross-checked the records and determined that it was the Claimant who was responsible. There was enough evidence that the Claimant was responsible for failing to ensure that there was a correct level of the tracks on the dates in question.

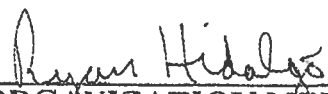
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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


The Claimant in this case was issued a ten-day deferred suspension for this incident of wrongdoing. Given the seriousness of the offense and the relative leniency of the discipline, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued that discipline to the Claimant. Therefore, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER
DATED: 10/17/16

CARRIER MEMBER
DATED: 10/17/16