

BEFORE PUBLIC LAW BOARD NO. 6043

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

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 187

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

1. The dismissal of Mr. C. Banks for alleged violation of On-Track Safety Rules – Rule 300 – Job Briefing, On-Track Safety Rules – Rule 900 – Maximum Speed, On-Track Safety Rules – Rule 904 – Stopping and Safe Braking Distance and USOR – Rule 0204 – Repetition in connection with an incident that occurred on January 19, 2013 at or near Mile Post 419.6 on the Baton Rouge Subdivision was arbitrary, capricious, excessive and in violation of the Agreement (System File 130205/IC-BMWED-2013-00031 ICE).
2. As a consequence of the violation referenced in Part 1 above, Claimant C. Banks shall be granted the remedy in accordance with Rule 33(i) of the Agreement.”

FINDINGS:

By notice dated January 21, 2013, 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 January 19, 2013, incident involving a Mark IV Tamper and Ballast Regulator. The investigation was conducted, as scheduled, on January 23, 2013. By letter dated February 5, 2013, 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 Carrier failed to meet its burden of proving the charges leveled against the Claimant, because the Carrier failed to consider any of the mitigating factors present in this matter, and because the discipline imposed was arbitrary, unwarranted, and excessive.

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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating the Carrier's safety rules when he failed to properly perform his duties on January 19, 2013. He was operating a ballast regulator and was responsible for a collision between two machines. The Claimant was following the other machine and ran into the back of it.

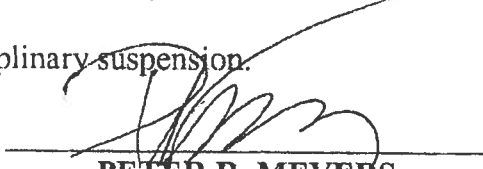
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The Claimant in this case had been employed by the Carrier for thirty-eight years.

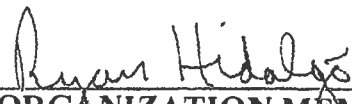
Although he had some prior discipline, he had an overall good performance evaluation. Fortunately, there was no major damage that occurred here. Given the lengthy service of this Claimant, this Board finds that the Carrier acted unreasonably when it terminated the Claimant's employment. Consequently, we order that the Claimant be reinstated to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 10/17/16



CARRIER MEMBER
DATED: 10/17/16