

**BEFORE PUBLIC LAW BOARD NO. 6043**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION  
IBT RAIL CONFERENCE  
and  
ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 188**

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

1. The dismissal of Trackman M. Page for violation of USOR General Rule A – Safety, USOR General Rule C – Alert and Attentive, USOR General Rule M – Railroad Property, On Track Safety Rules – Rule 902 – Approaching Railroad Crossings, Moveable Bridges and Power Switches in connection with an incident that occurred on Friday, November 30, 2012 is arbitrary, unwarranted and excessive (System File 121219/IC-BMWED-2013-00014 ICE).
2. As a consequence of the violation referenced in Part 1 above, Mr. Page shall be granted the remedy in accordance with Rule 33(i) of the Agreement.”

**FINDINGS:**

By notice dated November 30, 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 a November 30, 2012, incident in which the Claimant allegedly had violated Carrier rules when he was involved in a crossing accident while operating an anchor spreader. The investigation was conducted, as scheduled, on December 6, 2012. By letter dated December 19, 2012, 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 failed to stop his machine before it collided with a tractor-trailer and that the Claimant was responsible for this accident, 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 violated Rule 33(g)'s time limit provisions when it failed to hold a hearing within five days of the date that the Claimant was removed from service, because several mitigating factors show that the ultimate penalty of dismissal was inappropriate in this case, and because the Claimant's foreman failed to secure an employee to perform flagging duties while the Claimant operated his machine across any railroad crossings on the date in question.

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 Organization argues that the Claimant was removed from service on November 30, 2012, according to his notice of investigation. A review of that notice of investigation makes it clear that it says nothing about the Claimant being removed from service on November 30, 2012. The notice of investigation was sent on November 30, 2012, and it scheduled the formal investigation for December 6, 2012. It says nothing in that notice of investigation about the Claimant being removed from service that date. Hence, this Board finds that there was no violation of the procedural time limits set forth in the Agreement. The hearing was held within ten

days from the date of the notice; and since the Claimant was not held out of service until the following week, which was only a few days before the hearing, there was no violation of Subsection (g).

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 when he was operating equipment that hit a tractor trailer at a crossing. The Claimant admitted that he was at fault. This Board recognizes that there was nobody flagging at that intersection, but the Claimant had been made aware of that fact earlier in the day. The equipment that the Claimant was operating did not make the gates go down, and so it was required that the Claimant be vigilant as he approached the intersection.

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 terminated for the accident that occurred. The record reveals that he has been employed by the Carrier since 2000. Given that lengthy seniority, this Board finds that it was unreasonable for the Carrier to terminate the Claimant's employment for this accident, which the testimony makes clear was a very hard accident to avoid. This Board recognizes that the Claimant had previously received a thirty-day working suspension, as well as a thirty-day deferred suspension for argumentative and disruptive behavior only a few months before this incident.

Consequently, this Board orders 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 work shall be considered a lengthy disciplinary suspension for his wrongdoing.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**ORGANIZATION MEMBER**

DATED: 2/17/15

  
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**CARRIER MEMBER**

DATED: 2/17/15

Concurrence and Dissent  
forthcoming