

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 19

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

1. The sixty (60) day suspension assessed Bridgeman R.D. Warford for his alleged unauthorized absence on November 7, 8, and 9, 2001, was without just and sufficient cause, based on unproven charges and in violation of the Agreement (System File 032002/IC-134-02-18).
2. As a consequence of the violations referred to above, Bridgeman R.D. Warford shall be allowed the remedy prescribed in Rule 33(i).

FINDINGS:

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

By letter dated November 12, 2001, the Claimant was notified to attend a formal investigation and hearing to determine his responsibility, if any, for allegedly failing to report for duty as assigned and for allegedly being absent without proper authority on November 7, 8, and 9, 2001. After several postponements, the investigation was conducted on March 1, 2002. As a result of the investigation, the Claimant was found to have violated Maintenance of Way General Rule J, and he was issued a suspension of sixty calendar days. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to suspend the Claimant. The Carrier denied the claim.

The Carrier contends that the Claimant failed to fulfill his employment obligation

to the Carrier when he was absent without authority on November 7 and 8, 2001. The hearing record establishes that the Claimant was absent without permission and did not inform his supervisor until November 8, the second day that he was off, that he would not be at work.

The Carrier emphasizes that the Claimant acknowledged that he was aware of the proper instructions for calling in to work. Moreover, the Claimant previously had been counseled and disciplined concerning his non-compliance with the rules. The Carrier maintains that it is well documented that the Claimant has had prior instances in which he failed to properly follow the rules.

The Carrier asserts that the discipline at issue is another attempt on its part to correct the Claimant's behavior, through progressive discipline. The Carrier argues that it is quite apparent from the record, and the Claimant's past work record, that the Claimant was fully aware that he is required to be at work. The Carrier points out that it has an obligation to impose discipline in cases where rules are violated and due process has been maintained. The Carrier maintains that considering the Claimant's work history, which includes five prior instances where he was absent without authority, a sixty-day suspension is appropriate.

The Carrier ultimately contends that the claim should be denied in its entirety.

The Organization contends that the Carrier failed to meet its burden of proof in that there is no support in the transcript for the Carrier's conclusion. The Organization

emphasizes that there is no positive evidence in the record that supports the Carrier's finding that the Claimant acted in a manner that was inconsistent with the Carrier's philosophy. The Organization points out that none of the Carrier's witnesses could confirm that the Claimant had been absent without proper authority. The Organization argues that the transcript instead demonstrates that the Claimant did abide by the rules relating to absence from work. The Organization emphasizes that the Carrier failed to prove the charges leveled against the Claimant.

The Organization goes on to assert that the Carrier violated the Claimant's due process right to a fair and impartial hearing. The Organization points out that Carrier Officer Meador preferred the charges against the Claimant, presided over the investigation, and assessed the discipline at issue. The Organization maintains that Meador's conduct during the hearing was not conducive to a fair and impartial hearing, and demonstrates that he had pre-judged the Claimant. The Organization therefore asserts that the disciplinary suspension should be rescinded.

The Organization then argues that the discipline at issue was arbitrary, capricious, and should not be allowed to stand. The record shows that the Claimant should not have been charged with any offense, and he should not have been suspended in this instance. The Carrier failed to show any intent by the Claimant to disregard or otherwise avoid Rule J. The Organization therefore asserts that the Carrier's decision to discipline the Claimant should be overturned.

The Organization additionally contends that the Claimant provided medical documentation for his absence, and there is no dispute that the Claimant was ill on the two days he was absent. The Organization argues that the Claimant had a justifiable reason to be absent, and it emphasizes that the Board routinely has held that discipline is inappropriate when an employee has a justifiable reason for being absent.

The Organization ultimately contends that the claim should be sustained in its entirety.

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.

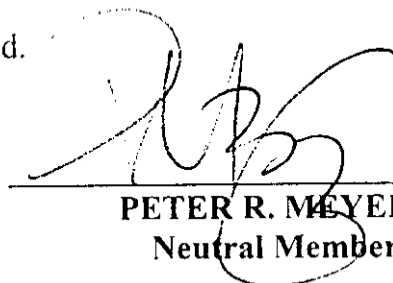
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to report for duty as assigned and for being absent without proper authority on November 7, 8, and 9, 2001. The record is clear that the Claimant did not have permission to be off and he admitted that he was not at work on those dates.

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 previously been disciplined on several occasions for being absent without permission, having received a one-day suspension, a three-day suspension, and a five-day suspension for attendance-related violations in 1998. Apparently, the previous disciplinary actions failed to have the effect of encouraging the Claimant to conform his behavior to the rules. Consequently, this Board cannot find that the sixty-day suspension issued to the Claimant for this unauthorized absence in 2001 was unreasonable, arbitrary, or capricious. We find that it was proper progressive discipline. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: 2-25-04



CARRIER MEMBER

DATED: 2/25/04