

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 193

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

1. The dismissal of Claimant B. Waldow for alleged violation of USOR General Rules B, FRA 213.118(3.2) and Engineering Track Standards 1.3 (17, 18, 19 and 21) in connection with incidents which occurred on Friday, January 31, 2014; Tuesday, February 4, 2014; and Wednesday, February 5, 2014 was arbitrary, capricious, excessive and in violation of the Agreement (System File A41414/IC-BMWED-2014-00031 ICE).
2. As a consequence of the violation referenced in Part 1 above, Mr. B. Waldow shall be granted the remedy in accordance with Rule 33(i) of the Agreement."

FINDINGS:

By notice dated February 7, 2014, 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 that occurred on January 31, February 4, and February 5, 2014, involving alleged poor housekeeping in the shop and in a Carrier vehicle, alleged failure to place proper reference points on a rail changed in CWR, and alleged failure to comply with instructions and be productive. The investigation was conducted, as scheduled, on February 13, 2014. By letter dated February 28, 2014, 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 consider obvious mitigating factors, 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 evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant violated several Carrier rules when he failed to perform his work on the day in question. Specifically, the Claimant was properly found guilty of poor housekeeping, failure to place proper reference points on a changed rail, and failure to comply with instructions. The Claimant's admitted actions subjected him to the disciplinary process.

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.

Although the Claimant admitted his wrongdoing in this matter, there were several mitigating factors that impact the amount of discipline that should have been assessed against the Claimant. There were weather issues, confusion over instructions, trains in


the way of his performing his work, as well as other problems. Given those mitigating factors, this Board finds that it was unreasonable and arbitrary for the Carrier to terminate this 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 for his admitted acts of wrongdoing.

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