

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 194

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

1. The dismissal of Mr. A. Harrell for violation of USOR General Rule H –
Furnishing Information and Conduct in connection with his alleged claiming of
overtime without working the hours on Wednesday, February 5, 2014 and
Thursday, February 6, 2014 was arbitrary, capricious and excessive (System File
A41414(1)/IC-BMWED-2014-00032 ICE).
2. As a consequence of the violation referenced in Part 1 above, Claimant A.
Harrell shall be granted the remedy in accordance with Rule 33(i) of the
Agreement."

FINDINGS:

By notice dated February 19, 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 on February 5 and 6, 2014, involving the Claimant allegedly claimed overtime without working the hours. The investigation was conducted, as scheduled, on February 21, 2014. By letter dated March 6, 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 meet its heightened burden of proof, because the Carrier failed to prove that the Claimant intended to deceive, and because the discipline imposed was arbitrary, excessive and in violation of the Agreement.

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 was guilty of violating Carrier rules when he submitted hours for payment that he did not work. The Claimant claimed more overtime pay than he was entitled to and, thereby, subjected himself 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.

The Claimant in this case was terminated from his employment. Although the Claimant did violate the Carrier rules, it is evident from this record that there was some confusion between the Claimant and his foreman as to what overtime was actually worked by the Claimant and how it should be recorded. That confusion raises some question as to whether or not the discipline that was issued by the Carrier was


appropriate. This Board, having reviewed all of the record, comes to the conclusion that the Claimant shall be reinstated to service, but without back pay. The Carrier acted arbitrarily when it terminated the Claimant's employment. The time that the Claimant was off work shall be considered a lengthy disciplinary suspension for his rule violations.

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 the rule violations.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 10/17/16



CARRIER MEMBER
DATED: 10/17/16