

BEFORE PUBLIC LAW BOARD NO. 6043

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

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 209

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

1. The dismissal of Mr. M. Mitok for alleged violation of USOR General Rule A, USOR General Rule C, USOR 300 and Regional Chief Engineer Bulletin 14 on Friday, August 29, 2014 for allegedly not having standardized forms for a Distance to Stop Test, not verifying Permit or Authority Limits and not having Operating Bulletins in possession was arbitrary, capricious, excessive and in violation of the Agreement (System File A11914/IC-BMWED-2014-00209 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Mitok shall be granted the remedy in accordance with Rule 33(i) of the Agreement.”

FINDINGS:

By notice dated September 4, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant allegedly had violated Carrier Rules in connection with an August 29, 2014, incident in which the Claimant allegedly did not have standardized forms for a Distance to Stop Test, did not verify Permit or Authority Limits, and did not have the Operating Bulletins. The investigation was conducted, as scheduled, on September 12, 2014. By letter dated September 19, 2014, the Claimant was notified that he had been found guilty as charged and was being dismissed from the Carrier’s service. The Organization subsequently filed the instant claim on the Claimant’s behalf, 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 establishes that the Claimant is guilty as charged, because there are no mitigating circumstances that would warrant reducing the discipline imposed, and because the discipline imposed was warranted and was not arbitrary, capricious, or an abuse of the Carrier's discretion. The Organization contends that the instant claim should be sustained in its entirety because there is no evidence that the Claimant willfully or knowingly complied with the cited rules although he failed to technically comply, because the discipline imposed was arbitrary in light of the Claimant's years of service, because the discipline imposed was punishment rather than corrective in nature, and because the discipline imposed was harsh, excessive, and unsupported by the record.

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, including USOR General Rules A and C, USOR 300, as well as Regional Chief Engineer Bulletin 14, when he was piloting a surveying truck on August 29, 2014. The Claimant's supervisor, Gallardo, testified that he did not hear the Claimant announce his control points when he went to Main Street in Matteson, Illinois. He also did not hear the Claimant announce his control point after he cleared the track authority. Furthermore, when he met with the Claimant, the Claimant did not have the bulletins and other forms that he was required to have in order to operate the equipment.

The Claimant admitted that he did not take everything with him. The supervisor pointed out that the Claimant had attended a safety summit only two days earlier where the importance and necessity of having those forms with him were discussed. The Claimant admitted to all of the violations during the investigation.

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.

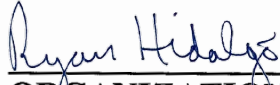
The Claimant in this case was terminated. Given the previous disciplinary record of this Claimant, coupled with the seriousness of this offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, this claim must be denied.

AWARD:

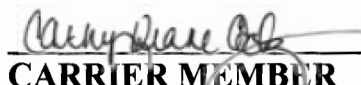
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: July 24, 2018



CARRIER MEMBER
DATED: July 24, 2018