

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 21

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

1. The fifteen (15) day suspension assessed Backhoe Operator C.L. Fedrick for his alleged failure to properly perform his duties as a machine operator on August 8, 2001, was without just and sufficient cause and excessive and undue punishment (System File A0911011MC-134-01-39).
2. Backhoe Operator C.L. Fedrick shall now 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 backhoe operator.

By letter dated August 15, 2001, the Claimant was notified to attend a formal investigation and hearing to determine his responsibility, if any, for allegedly failing to properly perform his duties as a machine operator on August 8, 2001, by failing to take appropriate action after observing Train Number 58 speeding over a slow order near Milepost 865.7 on the McComb Subdivision. The investigation was conducted, as scheduled, on August 24, 2001. As a result of the investigation, the Claimant was found to have violated General Rule H and Operating Rule 524, and he was issued a suspension of fifteen 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, on August 8, 2001, he did not take the appropriate action when he witnessed Amtrak Train 58 speed over an imposed ten-mile-per-hour slow order. The Carrier emphasizes that the record demonstrates that the Claimant was aware that the Amtrak train was going too fast through the slow order, and that the Claimant did not contact the Amtrak crew or any Carrier officer to rectify the situation.

The Carrier maintains that the evidence presented supports the determination that the Claimant was guilty. The hearing officer found that the Claimant's admission that he did not take any action was enough to warrant a suspension. The Carrier argues that this Board does not have jurisdiction to substitute its judgment for that of the hearing officer. The Carrier asserts that it has the right to expect that its employees work while they are on duty, and haphazard work need not be tolerated.

The Carrier asserts that it is obligated to impose discipline in cases where rules are violated and due process is maintained. The Carrier emphasizes that the investigation in this matter was fair and impartial, its rules were violated by the Claimant, and the discipline was 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. The record contains no positive evidence whatever in support of the Carrier's findings that the

Claimant committed any actions inconsistent with the Carrier's philosophy. None of the Carrier's witnesses could confirm that Claimant committed the actions with which he was accused.

The Organization instead argues that the record contains considerable evidence showing that the Claimant did in fact properly perform his duties as a machine operator. The Organization maintains that the charges against the Claimant were ridiculous, unsubstantiated, and without corroborative testimony. The Organization emphasizes that there was no probative evidence to support the Carrier's findings, and 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 there was no proof that the Claimant received the notice of investigation. The Organization argues that the Carrier plainly pre-judged the Claimant. The conduct of Hearing Officer Ariens, including interrupting testimony and the statements of the Claimant's representative, was not conducive to a fair and impartial hearing. The Organization therefore argues that the Carrier's decision to suspend the Claimant for fifteen calendar days should be rescinded.

The Organization then argues that the discipline imposed upon the Claimant was arbitrary, capricious, and should not be allowed to stand. The Claimant should not have been charged with any offense, nor should he have been suspended in this instance. The Organization contends that the Carrier failed to show that the Claimant intended to

disregard Carrier's rules, so the Carrier's decision to discipline the Claimant should be overturned. 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 take the appropriate action when he witnessed Amtrak Train 58 speed over an imposed ten-mile-per-hour slow order. When the Claimant was asked if on August 8, 2001, he was in compliance with the safety rules, he stated, "Well, I thought I was. Now I have my doubts." In addition, when he was asked, "So after today, you've learned that there is some other actions that may have been necessary?", the Claimant responded, "Yes, I would say that's true, yes." The Claimant later stated that he would probably get in touch with Amtrak if this incident occurred again.

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 record in this case reveals that at the time of the incident in question in August of 2001 the Claimant had been employed by the Carrier for over twenty-nine years. He had an unblemished service record before this incident. Given that seniority and that previous record, this Board finds that it was unreasonable for the Carrier to issue the Claimant a fifteen-day suspension for the incident involved here. Therefore, we order that the fifteen-day suspension be reduced to a written reprimand and the Claimant be made whole for the lost pay.

AWARD:

The claim is sustained in part and denied in part. The fifteen-day suspension of the Claimant shall be reduced to a written reprimand and the suspension shall be removed from the Claimant's record. The Claimant shall be made whole for the lost pay.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 2-25-04



CARRIER MEMBER

DATED: 2/25/04