

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 212

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

1. The dismissal of Mr. K. Brigham for alleged violation of USOR General Rules C, D and W and USOR 700 for allegedly failing to inspect behind a surfacing gang resulting in a switch hard to throw on October 21, 2014 was arbitrary, capricious, excessive and in violation of the Agreement (System File C141125/IC-BMWED-2015-00007 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Brigham shall be granted the remedy in accordance with Rule 33(i) of the Agreement.”

FINDINGS:

By notice dated October 29, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant allegedly had violated Carrier rules by failing to inspect behind a surfacing gang, resulting in a switch hard to throw on October 21, 2014. The investigation was conducted, as scheduled, on November 7, 2014. By letter dated November 25, 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 the Carrier failed to meet its burden of proof, and because the discipline imposed was arbitrary and unwarranted.

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 USOR General Rules C, D, W, and USOR 700 when he did not properly inspect a switch before putting it back into service. The Claimant admitted that he forgot to check the 17/18 switch because he was more focused on "getting the surfacing equipment in the clear." In his testimony, the Claimant was asked whether or not he inspected all of the switches before he put them back into service, and he stated, "I personally did not check them." The Claimant also acknowledged that it was his responsibility to ensure that the track was safe and that all switches were operable. Although the Claimant states that he delegated the responsibility to others, the fact remains that the Claimant had the basic responsibility of getting the work done and he did not do it.

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 guilty of a very serious offense. Given that seriousness, 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:

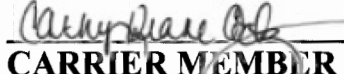
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: July 24, 2018



CARRIER MEMBER
DATED: July 24, 2018