

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 22

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

1. The sixty (60) day suspension and disqualification of Track Inspector V.G. Jenkins for his alleged failure to perform his duties as a track inspector when on August 8, 2001, he failed to take appropriate action when Train 58 exceeded the speed limit in his area was without just and sufficient cause and excessive and undue punishment (System File 091101\IC-134-01-38).
2. Mr. V.G. Jenkins 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 track inspector.

On August 24, 2001, the Carrier conducted a formal investigation of charges that on August 8, 2001, the Claimant had failed to properly perform his duties as track inspector near Milepost 867.5 on the McComb Subdivision when Claimant allegedly failed to take appropriate action when he allegedly observed Train Number 58 speeding over a slow order at this location. As a result of this investigation, the Claimant was found guilty, assessed a sixty-day suspension, and disqualified as a track inspector. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's imposition of discipline. The Carrier denied the claim.

The Carrier initially contends that the Claimant failed to fulfill his employment obligation when he did not take the appropriate action after witnessing Amtrak Train 58

speed over an imposed ten mile per hour slow order. The Carrier points out that at the investigation, it was developed that the Claimant had been aware of the Amtrak train 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 argues that the evidence supports its determination that the Claimant was guilty, and the hearing officer found that the Claimant's admission that he did not take any action was enough to warrant a suspension.

The Carrier maintains that this Board does not have jurisdiction to substitute its own judgment for that of the hearing officer. The Carrier argues that it has the right to expect that its employees will 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. The Carrier emphasizes that the investigation was fair and impartial, rules were in fact violated, and the discipline was appropriate.

The Carrier ultimately contends that the claim is without merit, and it should be denied in its entirety.

The Organization contends that the Carrier failed to meet its burden of proof. The Organization argues that the transcript in this matter does not contain any positive evidence whatsoever in support of the Carrier's findings that the Claimant had committed actions inconsistent with the Carrier's philosophy and rules. The Organization emphasizes that no one was able to positively confirm the alleged actions of which the Claimant was accused. The Organization asserts that the transcript instead reveals a considerable amount of evidence that the Claimant did, in fact, properly perform his

duties as a track inspector. The charges are, at best, ridiculous, and they are without any substantiation or corroborative testimony.

The Organization goes on to contend that the Claimant's due process rights to a fair and impartial hearing were violated. The Organization asserts that the Claimant did not receive the original investigation letter that was mailed to him, and there is no proof of receipt establishing that the Claimant ever received that notice; there is an acknowledgement of receipt, however, as to the hand-delivered copy. The Organization maintains that the Carrier's Engineering Supervisor clearly had prejudged the Claimant, and the Carrier's hearing officer engaged in conduct, such as interrupting testimony, that was not conducive to a fair and impartial hearing. The Organization argues that the Carrier's decision to disqualify the Claimant and suspend him for sixty calendar days should be rescinded.

The Organization further asserts that the assessed discipline was arbitrary, capricious, and should not be allowed to stand. The hearing transcript establishes that the Claimant should not have been charged with any offense, nor should he have been suspended in this instance. The Carrier failed to produce any evidence that the Claimant intentionally disregarded its rules, so the Carrier's decision to discipline the Claimant cannot stand. The Organization points out that the assessed discipline, a sixty-day suspension and disqualification, represents excessive and undue punishment, particularly because the Claimant's seniority dates back to 1966, and he apparently has a clear discipline record.

The Organization contends that the Claimant is entitled to the remedy prescribed

in Rule 33(i), and the instant 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. We find that the hearing was fair and the Claimant was guaranteed all of his due process rights throughout the proceeding.

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 fulfill his employment obligations when he did not take the appropriate action after witnessing an Amtrak train speeding over the ten mile per hour slow order. It is clear from the record that the Claimant was aware that the Amtrak train was going too fast through the slow order and he did not contact the Amtrak crew or any Carrier officer to correct the situation. When he was asked at the investigation whether he told the dispatcher that the Amtrak train had blown the slow order, he admitted that he had not. When he was asked why he did not tell the dispatcher what had occurred, the Claimant stated, "I have no reasoning."

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 the Claimant has been employed by the Carrier since 1966 and he has a clean disciplinary record. Although the violation of which he

was found guilty was very serious, this Board believes that given that lengthy seniority, the appropriate discipline would have been a thirty-day suspension for this serious offense. Therefore, we order that the sixty-day suspension be removed from the Claimant's record and be replaced by a thirty-day suspension. The Claimant shall be made whole for the lost pay resulting from the reduction in the discipline.

AWARD:

The claim is sustained in part and denied in part. The sixty-day suspension of the Claimant is hereby reduced to a thirty-day suspension and the Claimant shall be made whole for the additional thirty days.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 3-15-04



CARRIER MEMBER

DATED: 3/15/04