BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 222

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

1. The discipline (suspension) imposed upon Mr. J. Lawrence for violation of multiple Carrier rules in connection with allegations Mr. Lawrence occupied track without protection in a controlled point on October 2, 2013 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C 13 11 04/IC-BMWED-2014-00001 ICE).

2. As a consequence of the violation referred to in Part 1 above, Claimant J. Lawrence shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 6043 has jurisdiction over the parties and the dispute involved herein.

Claimant established and holds seniority within the Carrier's Maintenance of Way Department. At the time of the events giving rise to this dispute, Claimant was working as a welder under the supervision of Track Supervisor J. Gutierrez. On October 8, 2013, Claimant was given notice of an investigation in connection with the following charge:

> to develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies in connection with an incident that occurred on Wednesday, October 2, 2013 at approximately 1250 hours at approximate Matteson Sub MP 45 at/or near Gary, Indiana when you allegedly occupied track without protection.

After a formal investigation on October 18, 2013, Claimant was found in violation of On-Track Safety Rule 600 - Train Approach Warning and On-Track Safety Rule 100 - Fouling the Track and was assessed a five-day actual suspension and a ten-day deferred suspension.

On October 2, 2013, Claimant was welding on a frog. While his watchman went to the truck to retrieve an item, Claimant remained fouling the track. Shortly thereafter, a train approached. The watchman did not get Claimant out of the way of the oncoming train until it was

within two car lengths. The supervisor testified that the only type of protection not allowed in these circumstances was individual train detection. Claimant admitted that at the time of the incident he did not comply with the "Train Approach Warning" rule:

> SECTION 6: ON-TRACK SAFETY WITHOUT WORKING LIMITS
> 600. Train Approach Warning
> Train Approach Warning may be used when performing routine inspection or minor work, when the work will not affect the movement of trains. An employee may not act as a watchman unless assigned by the EIC. Where appropriate, watchman will be provided with air horn and whistle.

The Carrier contends that Claimant admitted failing to use proper protection and that it has presented substantial evidence of his guilt. The Carrier contends that Claimant further testified that he had previously attended on-track protection training and admitted that at the time of the incident he did not comply with the "Train Approach Warning" rule.

The Carrier contends that the level of discipline was appropriate, because of the serious nature of Claimant's negligent behavior and the fact that Claimant could have been injured. The Carrier contends that there are no mitigating circumstances that would justify a reduction in the penalty assessed.

The Organization contends that while Claimant has admitted to the conduct, the discipline assessed was arbitrary and excessive. The Organization contends that Trainmaster Murphy was witness to the incident but failed to take immediate steps to correct Claimant's action. Moreover, it is undisputed that Claimant and his assigned watchman established the appropriate site distance to perform their assigned duties and when a train did approach their working limits, Claimant's watchman cleared him from the tracks. The Organization contends that a more appropriate response would have been a coaching and counseling session with Claimant and his assigned watchman.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant.

Claimant admitted that he failed to use proper protection while fouling the track. Where there is an admission of guilt, there is no need for further proof. This Board finds that substantial evidence supports the findings against Claimant.

The remaining question is whether the level of discipline is appropriate under the circumstances. This Board has the authority to alter the discipline assessed only when it has determined it to be arbitrary, capricious, or an abuse of the Carrier's discretion. While the Carrier could have elected to address the rule violation in the way urged by the Organization, it cannot be said that its decision not to do so was arbitrary. Leniency is the prerogative of the employer. Claimant's failure to ensure proper track protection was a serious error that could have led to his injury. The five-day suspension was not arbitrary or excessive.

AWARD

The claim is denied.

Kathryn A. VanDagens, Neutral Member

Ryan Hidalgo, Organization Member

Cathy Cortez, Carrier Member

Dated: May 1, 2019

Dated: _____