

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 25

STATEMENT OF CLAIM:

Appeal of the thirty-day suspension issued to Claimant John G. Lee on charges that the Claimant allegedly failed to comply with the rules and/or instructions given him to seek medical attention after an incident in which Claimant sustained an alleged personal injury.

FINDINGS:

At the time of the events leading up to this dispute, Claimant Lee was employed by the Carrier as a Trackman, headquartered at Hattiesburg, Mississippi.

By letter dated March 10, 2004, the Claimant was notified to attend a formal hearing and investigation into charges that the Claimant had failed to comply with Carrier rules and/or instructions given him to seek medical attention after an incident in which Claimant had sustained an alleged personal injury. The investigation was conducted, as scheduled, on March 19, 2004. By letter dated April 6, 2004, the Claimant was notified that as a result of the investigation, he had been found guilty as charged and was being assessed a suspension of thirty calendar days. The Organization thereafter filed a claim on behalf of the Claimant, challenging the Carrier's decision to issue the thirty-day suspension. The Carrier denied the claim.

The Carrier initially contends that the record demonstrates that the Claimant was afforded a fair and impartial investigation, and the evidence clearly supports the finding

that the Claimant was guilty of failing to comply with his supervisor's instructions. The Carrier emphasizes that the hearing officer determined that the supervisor's testimony was more credible than the Claimant's testimony. The Carrier insists that the hearing officer's credibility determination is supported by the fact that the Claimant changed his testimony, which casts serious doubts upon the Claimant's credibility.

The Carrier maintains that given the supervisor's testimony, the record clearly shows that the Claimant failed to comply with instructions to call if the Claimant needed to seek medical attention. The Carrier argues that failing to comply with a supervisor's instructions constitutes a serious offense that warrants suspension prior to a hearing. The Carrier asserts that the Claimant's own testimony demonstrates his understanding of the seriousness of his infraction. The Carrier therefore asserts that a thirty-day suspension cannot be considered improper or disparate.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the Carrier failed to meet its burden of proof. The Organization insists that the record does not contain any positive evidence whatsoever to support the Carrier's findings of any actions inconsistent with the Carrier's rules. The Organization argues that there is considerable evidence in the record that the Claimant did, in fact, properly comply with the rules and/or instructions given by the supervisor. The Organization asserts that, at best, the charges are ridiculous, and the charges are without any substantiation or corroborative testimony. The Organization insists that there was absolutely no probative evidence to support the Carrier's findings.

The Organization then asserts that the Carrier failed to afford the Claimants a fair and impartial hearing in that the Carrier has failed to apply and enforce its rules with reasonable uniformity for all employees. Moreover, the Organization argues that the Carrier pre-judged the Claimants, and the hearing officer's conduct was not conducive to a fair and impartial hearing.

The Organization insists that the Carrier failed to prove the charges leveled against the Claimant. Moreover, the discipline imposed was arbitrary and capricious, and it should not be allowed to stand. The Organization argues that the Claimant should not have been charged with any offense, nor suspended for thirty days.

The Organization ultimately contends that 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.

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 comply with the Carrier's rules and instructions given to him to seek medical attention after an incident in which the Claimant sustained a personal injury. The record is clear that the Claimant did not properly notify the Carrier in compliance with the Carrier rules.

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 issued a thirty-day suspension which activated a five-day overhead suspension. This Board finds that that discipline was excessive given the circumstances of this case. Therefore, we order that the Claimant's suspension be reduced to a fifteen-day suspension from the thirty-day suspension. The five-day overhead suspension will continue to remain effective so that the ultimate result of this award will be that the Claimant will receive twenty days off instead of the thirty-five which he originally received. The Claimant shall be made whole for any time that he lost in excess of the twenty days of suspension.

AWARD:

The claim is sustained in part and denied in part. The thirty-day suspension of the Claimant shall be reduced to a fifteen-day suspension and the Claimant shall be made whole for the additional time off in excess of the fifteen days of suspension resulting from this offense.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 6-26-06



CARRIER MEMBER

DATED: 6/26/06