

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE**

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 254

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

1. The dismissal of Mr. T. Sullivan for violation of USOR General Rule B – Reporting and Complying with Instructions, USOR General Rule I – Duty-Reporting or Absence and the CN United States Attendance Guide Lines for Unionized Employees in connection with being absent without authority on June 4, 11, and 16, 2014 is arbitrary, capricious and excessive (System File A 9 17 14/IC-BMWED-2014-00163 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Sullivan shall be granted the remedy in accordance with Rule 33(i) of the Agreement.”

FINDINGS:

By notice dated June 24, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant allegedly had violated Carrier Rules by allegedly being absent without authority on June 4, June 11, and June 16, 2014. The investigation was conducted, as scheduled, on July 3, 2014. By letter dated July 21, 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 the Carrier did not violate the procedures, guidelines, or protocols associated with the Attendance Guidelines; because the Claimant was afforded the benefit of progressive discipline; because the Claimant was afforded a fair and impartial hearing; and because the discipline imposed was not arbitrary or capricious, but instead was appropriate and progressive. 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 excessive, unreasonable, and cannot stand.

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 being absent from work on June 4, 11, and 16, 2014. Those absences violated the Carrier's Unexcused Absence Guidelines in its Attendance Policy. Those three absences were within the twelve-week period and subjected the Claimant to disciplinary action. The Claimant acted in violation of USOR General Rule B, Exhibit 2.

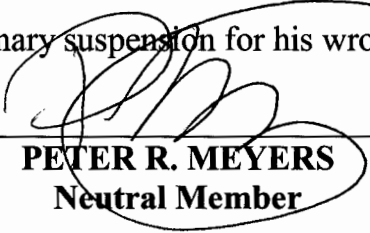
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was clearly deserving of discipline. However, given the mitigating circumstances that are evident in this file, including the fact that the Claimant took full responsibility for his actions, this Board finds that the Carrier acted

unreasonably, arbitrarily, and capriciously when it terminated the Claimant's employment. Therefore, we find that the Claimant shall be reinstated to service, but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension for his wrongdoing.

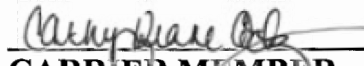


PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: July 24, 2018



CARRIER MEMBER

DATED: July 24, 2018