

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 26

STATEMENT OF CLAIM:

Appeal of the Carrier's dismissal of Claimant Timothy B. Horne on charges that the Claimant allegedly violated Carrier Operating Rule H, Furnishing Information and Conduct, in connection with the Claimant's becoming engaged in a physical altercation with another employee.

FINDINGS:

By letter dated December 21, 2005, the Claimant was notified to attend a formal hearing and investigation on charges that the Claimant allegedly had violated Carrier Operating Rule H, Furnishing Information and Conduct, in connection with an incident in which the Claimant became engaged in a physical altercation with another employee. After two postponements, the investigation was conducted on January 10, 2006. By letter dated January 26, 2006, the Claimant was notified that as a result of the investigation, he had been found guilty as charged and was being dismissed from the Carrier's service. The Organization thereafter filed a claim on behalf of the Claimant, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that the transcript clearly establishes that the discipline was warranted and appropriate. The Carrier asserts that the Claimant did not deny the incident as described by other witnesses, and there can be no doubt that the Claimant's actions on December 19, 2005, were intended to cause serious injury to the

other employee, the Claimant's son. The Carrier emphasizes that the Claimant tried to justify his actions by stating, "I do not tolerate disrespect from my children."

The Carrier maintains that the discipline in question was warranted. The Carrier points out that the Claimant committed a serious violation of the law and clearly intended to cause serious physical harm to the other employee. The Carrier argues that its rules do not allow for this type of behavior. The Carrier insists that, in the interests of the safety and welfare of its employees, it must react appropriately when this type of violence occurs.

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

The Organization initially contends that the discipline at issue was unwarranted, inappropriate, and non-progressive in nature. The Organization maintains that the proper purpose of discipline is not to inflict punishment, but to rehabilitate, correct, and guide employees in the proper performance of their assigned tasks. The Organization emphasizes that Board Awards consistently have held that the severity of the punishment must be reasonably related to the gravity of the offense.

The Organization asserts that, while recognizing the Carrier's concern over the alleged infraction, the penalty of dismissal is improper, arbitrary, harsh, and non-progressive in nature. The Organization argues that the Claimant was dismissed for his first offense, which clearly is non-progressive discipline without a chance to rehabilitate. The Organization emphasizes that the Board consistently has recognized the principle of

progressive discipline as being both essential and important in the railroad industry. The Organization insists that there can be no question that the Carrier's decision to dismiss the Claimant was unwarranted, inappropriate and non-progressive in its application.

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 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 Carrier Operating Rule H when he admittedly became engaged in a physical altercation with another employee.

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.


It is fundamental that engaging in violent behavior is sufficient grounds for dismissal, even on a first offense. This Board is not unmindful of the necessity of progressive discipline. However, there are some offenses which do not require that an employee receive lesser forms of discipline before he or she is discharged. Engaging in a physical altercation with another employee is one of those offenses. Therefore, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it

terminated the Claimant.

The claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER



CARRIER MEMBER

DATED: 5-24-07

DATED: May 24, 2007