

**BEFORE PUBLIC LAW BOARD NO. 6043**

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

**Case No. 30**

**STATEMENT OF CLAIM:**

Appeal of the Carrier's dismissal of Claimant J.C. Jackson, on charges that the Claimant allegedly violated Carrier Operating General Rule D and General Rule I, when Claimant allegedly failed to properly and safely perform his work, resulting in an alleged injury, and failed to promptly and properly report his alleged injury.

**FINDINGS:**

By letter dated March 10, 2005, the Claimant was notified to attend a formal hearing and investigation to ascertain the facts and determine the Claimant's responsibility, if any, "for the alleged failure (sic) to (1) you failed to properly and safely perform your work which caused your alleged injury on an unknown date and time in the area of Phillips, Ms, and (2) your alleged failure to properly and promptly report said alleged injury to yourself." After a postponement, the investigation was conducted on March 29, 2005. The investigation proceeded in the Claimant's absence and over the objection of the Organization. By letter dated April 15, 2005, the Claimant was notified that as a result of the investigation, he had been found guilty of violating Carrier's Operating General Rule D and General Rule I, and that he 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 after a proper investigation of the incidents in

question, the Claimant was found to have violated the cited rules. The Carrier argues that discipline was assessed after due consideration of the Claimant's personal record.

The Carrier then addresses the Organization's assertion that the Claimant never received the letter postponing the investigation by pointing out that a certified letter was sent to the most recent address provided by the Claimant. The Carrier emphasizes that this letter advised the Claimant that at the request of the Organization, the investigation was postponed until March 29, 2005. The Carrier insists that, acting on the Organization's request to postpone the hearing, it sent the Claimant a certified letter, which is the customary means of conveying such information. The Carrier asserts that the Claimant's absence was not the fault of the Carrier.

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

The Organization initially contends that the Claimant never received the letter postponing the investigation in this matter to March 29, 2005. The Organization argues that the Carrier did not show that the Claimant had, in fact, received the postponement letter. Moreover, the transcript clearly shows that the Organization objected to proceeding with the investigation in the Claimant's absence. The Organization asserts that the transcript demonstrates that the Carrier simply violated the Claimant's "due process" rights by not affording him a fair and impartial hearing, due to the Claimant's absence at the investigation.

The Organization maintains that an objective evaluation of the transcript conclusively establishes that the discipline imposed in this case cannot be validly upheld.

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 that the Carrier failed to properly give the General Chairman the correct time for the hearing. Moreover, the Carrier did not provide a return receipt showing that the notice of the rescheduled hearing was properly sent to the Claimant.

This Board holds that these are very unusual circumstances and this case should have no precedential value. However, because of the poor performance of the Carrier in scheduling the hearing and notifying the Claimant of the new date, this Board holds that the Claimant must be reinstated to service, but without back pay. The reason for denying the Claimant back pay is that there is still no assurance that the Claimant is physically capable of returning to work.

This Board finds that the Claimant shall be ordered, within the next fourteen days, to come in for a physical examination; and if he passes that physical, he shall be reinstated to service with full seniority, but without back pay.

**AWARD:**

The claim is sustained in part. The Claimant shall be reinstated to service, but

without back pay, once he passes the Carrier's physical.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**ORGANIZATION MEMBER**

  
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**CARRIER MEMBER**

DATED: 5-24-07

DATED: May 24, 2007