

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 31

STATEMENT OF CLAIM:

Appeal of the Carrier's decision to impose a thirty-day suspension upon Claimant L.T. Polk, which will be held in abeyance for six months provided the Claimant incurs no further disciplinary action, on charges that the Claimant allegedly violated the Carrier's U.S. Operating Rule C, thereby sustaining a personal injury while on duty on June 13, 2005.

FINDINGS:

By letter dated June 20, 2005, the Claimant was notified to attend a formal hearing and investigation on charges that the Claimant allegedly had failed to properly and safely perform his work and had violated Carrier rules and/or instructions during an incident on June 13, 2005, in which the Claimant sustained an alleged personal injury. The investigation was conducted, as scheduled, on July 7, 2005. By letter dated August 22, 2005, the Claimant was notified that as a result of the investigation, he had been found guilty as charged and was being assessed a thirty-day suspension, which was to be held in abeyance for six months provided the Claimant did not incur further disciplinary action. The Organization thereafter filed a claim on behalf of the Claimant, challenging the Carrier's decision to issue the suspension. The Carrier denied the claim.

The Carrier initially contends that the record establishes that the Claimant's injury could have been prevented had the Claimant used blocking to secure the tamping frame. The Carrier asserts that there can be no dispute that the Claimant failed to use blocking.

The Carrier argues that the transcript clearly establishes that the Claimant's own inattentiveness did, in fact, result in his injury. Pointing to the testimony of an employee who was assisting the Claimant at the time of the incident, the Carrier maintains that when a process is known to occur 60% of the time in identical circumstances, then proper care must be taken to safeguard against known hazards. The Carrier emphasizes that the Claimant's failure to use blocking clearly was an intentional violation of Rule C.

The Carrier then contradicts the Organization's assertion that there was no testimony from any "competent eyewitness." The Carrier emphasizes the testimony provided by an experienced Machine Operator who worked with the Claimant's gang on the date in question. The Carrier maintains that this witness was, in fact, "competent" regarding the subject matter.

The Carrier goes on to argue that during the investigation, the Claimant acknowledged that if he had placed blocks beneath the clamp frame, then it would not have mattered if the cylinders were pinched. The Carrier asserts that this constitutes positive evidence that the Claimant violated the cited Carrier rule.

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

The Organization initially contends that the Carrier failed to show that the Claimant intended to not comply with Carrier rules. The Organization asserts that the Carrier bears the burden of proof in this disciplinary matter, but the transcript does not support the Carrier's conclusions. The Organization argues that there is no direct

testimony from any competent eyewitness other than the Claimant himself. The Organization emphasizes that the transcript does not contain any positive evidence whatsoever to support the Carrier findings that the Claimant actually violated the cited rule. Instead, the transcript contains merely a summary of the discussions among those present at the hearing.

The Organization insists that an objective evaluation of the record would conclusively establish that the discipline imposed upon the Claimant cannot be validly upheld. The Organization ultimately contends that the instant claim should be sustained in its entirety.

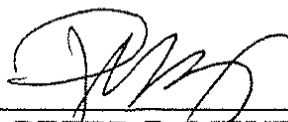
The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant violated Carrier rules on June 13, 2005. It is fundamental that the Carrier bears the burden of proof in all discipline cases. In this case, a thorough review of the transcript shows insufficient proof that the Claimant was guilty of violating any Carrier rules or instructions.

Moreover, the record reveals that the Claimant has a perfect personnel record over his twenty-nine-year career with the Carrier. Given the lack of evidence of any wrongdoing in the transcript and record, this Board must find that the claim is sustained.

AWARD:

The claim is sustained



PETER R. MEYERS

Neutral Member


ORGANIZATION MEMBER

DATED: June 23, 2008


CARRIER MEMBER

DATED: June 23, 2008