

**BEFORE PUBLIC LAW BOARD NO. 6043**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION  
IBT RAIL CONFERENCE  
and  
ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 352**

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

1. The discipline (dismissal) imposed upon Mr. J. Spahn for violation of carrier rules in connection with allegations Mr. Spahn engaged in non-railroad activities allowing visitors on railroad property and equipment without proper authorization on July 3, 2015 was arbitrary, excessive and in violation of the Agreement (System File C 15 07 23/IC-BMWED-2015-00139 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Spahn shall be reinstated to service, have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”

**FINDINGS:**

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 6043 has jurisdiction over the parties and the dispute involved herein.

Claimant established and holds seniority within the Carrier’s Maintenance of Way Department. At the time of the events giving rise to this dispute, Claimant had accumulated approximately thirty-five years of service with the Carrier and was working as a bridge tender under the supervision of Bridge Supervisor M. McDermott.

On July 6, 2015, Claimant was given notice of an investigation in connection with the following charge:

... to develop the facts and to determine your responsibility, if any, and whether you violated any Carrier rules, regulations and/or policies in connection with an alleged incident that occurred at approximately 1900 hours, July 3, 2015 at or near the East Dubuque drawbridge for engaging in non-railroad activities and allowing visitors on railroad property and equipment without proper authorization while on duty.

After a formal investigation on July 8, 2015, Claimant was found in violation of USOR General Rule P - Employee Conduct, USOR - General Rule S - Not Permitted on Equipment, LIFE

U. S. Safety Rules - Section III: Engineering Rules, Recommended Practices, and PPE - E-25 Visitors, On-Track Safety Rules - Rule 200 - All Road Workers, On-Track Safety Rules - Rule 300 - Job Briefings, and was dismissed from service.

Claimant was not scheduled to work on July 3, 2015, but swapped hours with another employee. Thereafter, Claimant arranged for a fireworks-viewing event on and near a swing bridge for no fewer than 19 people, including children, on the Carrier's property while he was on-duty and being compensated by the Carrier. Claimant did not have permission from management to have visitors on property or to host a viewing party. Claimant's guests did not wear appropriate Protective Equipment, were foul of the track without protection, and at least one guest was loaded onto railroad equipment on the track and pulled to the viewing location. When supervision arrived at the scene, lawn chairs, blankets, a cooler, and a radio were in plain sight on the bridge.

After the Investigation, Claimant was charged and found guilty of violation of multiple rules and was dismissed from the Carrier's service. This appeal followed and the parties were unable to resolve the dispute, so it came before this Board for resolution.

The Carrier contends that it has presented substantial evidence of Claimant's violations and that dismissal was appropriate discipline. The Carrier contends that Claimant has not refuted any of the charges or rule violations and took full responsibility for his actions during his testimony during the on-property investigation.

Therefore, the Carrier contends, the sole issue before this Board is whether the measure of discipline assessed was arbitrary or excessive. The Carrier contends that dismissal was the appropriate penalty because Claimant had been conditionally reinstated only six months prior to this incident. The Carrier contends that the penalty imposed was not arbitrary, capricious, or an abuse of the Carrier's discretion, and there are no mitigating circumstances which would justify a reduction in the discipline assessed.

The Organization concedes that Claimant engaged in the charged action but contends that the discipline imposed was arbitrary and unwarranted and exceedingly harsh. The Organization contends that Claimant is a veteran employee with 35 years of service with the Carrier. Further, no injury or damage occurred as a result of Claimant's actions.

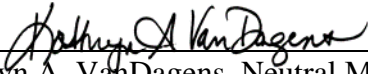
The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant.

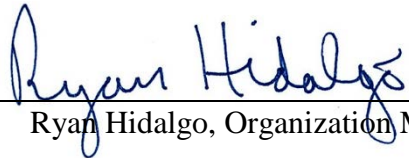
Claimant admitted that he invited 19 people onto the Carrier's property to view fireworks without permission and that the visitors were foul of the track without protection and without wearing the proper PPE. Where there is an admission of guilt, there is no need for further proof. This Board finds that sufficient evidence exists to support the findings against Claimant.

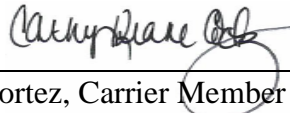
The remaining question is whether the imposition of dismissal was excessive. Given the seriousness of Claimant's transgression and his recent reinstatement to his position, the Carrier's decision was neither arbitrary nor excessive.

**AWARD**

The claim is denied.

  
\_\_\_\_\_  
Kathryn A. VanDagens, Neutral Member

  
\_\_\_\_\_  
Ryan Hidalgo, Organization Member

  
\_\_\_\_\_  
Cathy Cortez, Carrier Member

Dated: May 1, 2019

Dated: \_\_\_\_\_