

**BEFORE PUBLIC LAW BOARD NO. 6043**

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

**Case No. 354**

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

1. The discipline (dismissal) imposed upon Mr. J. Gage in connection with allegations Mr. Gage failed to follow directions of the Waterloo Yardmaster and set his vehicle on track outside of work limits on August 17, 2016 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C 16 08 30/IC-BMWED-2016-00142 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Gage shall be reinstated to service, have his record cleared of the charges leveled against him and 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 J. Gage established and held seniority within the Carrier’s Maintenance of Way Department. At the time of the events giving rise to this dispute, Claimant had accumulated approximately nine (9) years of service with the Carrier and was working as a welder under the general supervision of Manager of Engineering N. Kruckenberg.

On August 19, 2016, Claimant was given notice of an investigation in connection with the following charge:

to develop the facts and to determine your responsibility, if any, in connection with an alleged incident that occurred at approximately 1230 hours, August 17, 2016, at or near the Waterloo, Iowa, yard office, which resulted in your alleged failure to follow directions of the Waterloo yardmaster when you allegedly set on the track outside of work limits and whether you allegedly violated any company rules, regulations, and/or policies.

After a formal investigation on August 22, 2016, Claimant was found in violation of On-Track Safety Rules 300 - Job Briefings; and 804 Responsibilities of Individual Roadway Workers. In addition, he was found in violation of USOR Rules 0100 - Rules, Regulations and Instructions; General Rule A - Safety; General Rule B - Reporting and Complying with Instructions; General

Rule C - Alert and Attentive; General Rule W - Job Briefings; Rule 0300 - Rule Books & Timetables; Rule 0520 - Movement on Non-Main Track, Region Quarterly Bulletin Reissue; Section 5: Work on Non-Controlled Track, Region Quarterly Bulletin Reissue Page 4; and Section 1- Introduction 100, Fouling the Track. Claimant was dismissed from the Carrier's service.

On April 17, 2016, Claimant set his assigned vehicle on the track outside of working limits, failing to follow the instructions of the Waterloo Yardmaster. Claimant admitted his violation, stating that he got Logan Street confused with Fourth Street and set the truck on the wrong location. When the switcher crew alerted him to his error, he moved off the crossing at Fourth Street.

The Carrier contends that due to the seriousness of the incident and the multiple rule violations, Claimant was properly dismissed from service. The Carrier contends that Claimant admitted his violation, so it has met its burden of proof. The Carrier contends that Claimant's error put his own and other people's lives at risk.

The Organization contends that although Claimant committed an error, he was forthright and honest in explaining that he made a simple mistake regarding which crossing he was told to set his vehicle at. The Organization contends that once Claimant was aware of his error, he immediately corrected it. The Organization contends that no one was injured, and no damage was done to any vehicle.

The Organization contends that the level of discipline imposed was arbitrary and excessive.


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 set the truck at the wrong crossing and did not realize his error until others told him he was not where he was instructed to be. 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.

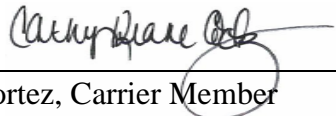
However, the Organization also challenges the penalty of dismissal, contending that it is too severe considering that Claimant made a simple error, admitted his mistake and corrected it before any injury or damage occurred. Due to the unique circumstances of this case, the Board finds that the penalty of dismissal is excessive. Therefore, the claim is sustained in part and denied in part. The Claimant will be returned to the Carrier's service and the discipline will be reduced to time served.

**AWARD**

The claim is sustained in part in accordance with the Findings.

  
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Kathryn A. VanDagens, Neutral Member

  
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Ryan Hidalgo, Organization Member

  
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Cathy Cortez, Carrier Member

Dated: May 1, 2019

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