

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 363

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

1. The discipline (dismissal) imposed upon Mr. E. Barnette in connection with allegations Mr. Barnette was insubordinate, argumentative and directed foul language toward a B&S foreman was arbitrary, excessive and in violation of the Agreement (System File C 15 07 23/IC-BMWED-2015-00138 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant E. Barnette shall 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 fifteen years of service with the Carrier and was working as a carpenter under the general supervision of Bridge Supervisor M. Hand.

On June 25, 2015, Claimant was given notice of an investigation in connection with the following charge:

The Investigation is being held to develop the facts and to determine whether you violated any Company rules, regulations and/or policies in connection with an incident that occurred at approximately 0945 hours, Wednesday, June 24, 2015 at or near Mile Post 88.1 on the Yazoo Subdivision in Webb, Mississippi, in which you were allegedly being insubordinate and argumentative with B&S Foreman Ryan Logan and used inappropriate language.

After a formal investigation on June 30, 2015, Claimant was found in violation of USOR General Rule B-Reporting and Complying with Instructions, and USOR General Rule H-Furnishing Information and Conduct and was dismissed from service.

Rule H provides, in part:

Rule H. Furnishing Information and Conduct.

Dishonesty, disloyalty, insubordination, willful neglect, gross carelessness, desertion from duty, making false reports or statements, concealing facts concerning matters under investigation, immoral conduct, including but not limited to conduct of any employee leading to the conviction of any felony, and serious violations of the law are prohibited. Employees must not be quarrelsome, vicious or enter into disputes, arguments, or fights with any person, regardless of provocation. Any incidents are to be reported to the proper authority.

On June 24, 2015, Claimant was with his gang getting ready for the day. Claimant's foreman directed him to perform a task. Claimant refused the directive and a verbal altercation ensued. Afterward, Claimant went to his vehicle, contacted his supervisor and asked for permission to leave work due to illness and left the property without informing his foreman.

The Carrier contends that it has produced substantial evidence of Claimant's guilt. During the investigation, Claimant admitted that he did not do the task he had been instructed to do. This admission was corroborated by several witnesses.

The Carrier contends that the discipline of dismissal was appropriate because Claimant had other incidents on his disciplinary record. The Carrier contends it has attempted to help Claimant correct his poor work habits, but to no avail.

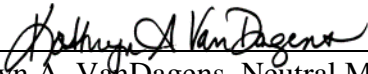
The Organization contends that Claimant was honest and forthright regarding the circumstances surrounding the incident. The Organization contends that Claimant promptly apologized to his foreman and suggested that his behavior on the day may have been related to a medical condition. The Organization contends that the discipline imposed was arbitrary and excessive.

The Board has carefully reviewed the record in this matter and finds that the Carrier has proven that Claimant failed to follow instructions when directed to do so and engaged in a verbal altercation with the Employee in Charge. As such, the charge against Claimant has been proven. The Carrier rightfully seeks to dissuade Claimant and others from similar acts of failing to follow proper instructions.

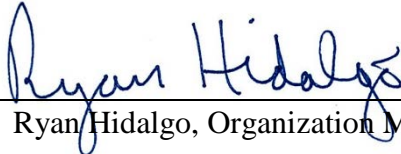
However, based upon the unique circumstances of this case and without precedent for any future similar claims, Claimant is returned to duty without back payment, but with all other rights and privileges intact. The claim is sustained in part and denied in part with the discipline reduced to time served.

AWARD

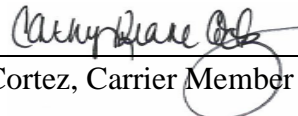
The claim is sustained in part in accordance with the Findings.



Kathryn A. VanDagens, Neutral Member



Ryan Hidalgo, Organization Member



Cathy Cortez, Carrier Member

Dated: May 1, 2019

Dated: _____