BEFORE PUBLIC LAW BOARD NO. 6043

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 37

STATEMENT OF CLAIM:

Claim of Machine Operator C.L. Gibson, that his "... personal record be cleared of the charge immediately and that he be made whole in accordance with Rule 33(I)" for his alleged violation of Rule 5 of the L.I.F.E. Book for Engineering, and General Rule B, C and U of the U.S. Operating Rules, when he allegedly overrode safety devices on the Mark IV tamper which resulted in a personal injury to himself on February 7, 2006. Organization file number: SA 050106.0 CN-IC C.L. Gibson (Investigation). Carrier file number: IC-134-106-14.

FINDINGS:

By letter dated February 13, 2006, the Claimant was directed to attend a formal hearing and investigation on charges that the Claimant allegedly had violated Carrier Rules and/or instructions during an incident in which the Claimant sustained an alleged personal injury. After a postponement, the investigation was conducted on March 15, 2006. By letter dated March 29, 2006, the Claimant was informed that as a result of the hearing, he had been found guilty of violating Carrier rules, and that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that the transcript demonstrates that the discipline was warranted and appropriate. The Carrier points out that the Claimant's personal record reveals a long history of rule violations in his short career, including failure to

wear safety apparel, tardiness, failure to properly operate a company vehicle causing damage to that vehicle, traveling in tamper without safety pins applied, and more. The Carrier insists that the discipline applied in this case certainly was progressive in nature. Moreover, the handling of this case was in accordance with the guidelines set forth in the parties' Agreement.

The Carrier maintains that substantial evidence established that the Claimant violated the cited Rules when he overrode safety devices in the deployment of forward projector buggies on the Mark IV tamper. The Carrier asserts that this was contrary to posted and written instructions, including warning labels attached to the machine.

The Carrier argues that based on the Claimant's prior record and his proven offense, discharge is the appropriate measure of discipline. The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that it is well-established in the railroad industry that the purpose of administering discipline is not to inflict punishment, but rather to rehabilitate, correct, and guide employees in the proper performance of their duties. The Organization points out that Board Awards consistently have held that the severity of the punishment must be reasonably related to the gravity of the offense. The Organization recognizes the Carrier's concern in the instant alleged offense, but maintains that the penalty of dismissal is improper, arbitrary and harsh in light of the nature of the injury.

The Organization asserts that proof of a rule violation, if it exists, does not by itself grant the Carrier *carte blanche* authority to arbitrarily assess punishment. The

Organization insists that the totality of the circumstances must be considered. Moreover, the unquestionable lack of facts in this instance also must be considered. The Organization argues that there can be no question that the record firmly establishes that the Carrier's decision to assess discipline in this case was unwarranted, inappropriate, and non-progressive in its application. The Organization contends that the Carrier's decision to discharge the Claimant therefore should be vitiated.

The Organization argues that an objective evaluation of the transcript conclusively establishes that the discipline imposed 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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Rule 5 of the L.I.F.E. Book for Engineering and General Rules B, C, and U of the U.S. Operating Rules when he overrode safety devices on the Mark IV Tamper, which resulted in a personal injury to himself on February 7, 2006. The record reveals on Page 27 that the Claimant admitted that he did not lock Locks Two and Four and only locked Nos. One, Three, and Five. The Claimant also admitted that he was told that when he was in travel mode, he should have locked Nos. Two and Four.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its

actions to have been unreasonable, arbitrary, or capricious.

The record in this case reveals that the Claimant has had numerous safety violations during his twelve years of employment as a machine operator. Consequently, severe discipline was appropriate in his case. On the other hand, the Claimant has worked for the Carrier for a long period of time. Moreover, there is some evidence that the instructions to the operators could have been better and that the Carrier has subsequently made some changes in that regard. As a result, this Board finds that the action taken by the Carrier in terminating the Claimant was unreasonable and arbitrary and we order that the Claimant shall be returned to work, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be returned to work, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.

PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: 11-14-07

CARRIER MEMBER

DATED: Nov. 14, 2007