BEFORE PUBLIC LAW BOARD NO. 6043

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 38

STATEMENT OF CLAIM:

Claim of Trackman R.A. Jones, 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 U.S. Operating Rule, General Rule B, when he failed to follow instructions issued by a supervisor to notify him prior to being absent from his position on March 6th 2006. Organization file number: SA 052006.0 CN-IC R.A. Jones (Investigation). Carrier file number: IC-134-106-16.

FINDINGS:

By letter dated March 10, 2006, the Claimant was directed to attend a formal hearing and investigation on charges that the Claimant allegedly had failed to follow his supervisor's instructions to obtain permission to be absent from his position on March 6, 2006. The investigation was conducted, as scheduled, on March 22, 2006. By letter dated April 10, 2006, the Claimant was informed that as a result of the hearing, he had been found guilty as charged, 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 Claimant's personal record was not used to determine guilt or innocence. Instead, the Claimant's record was reviewed only as information in the event discipline was found to be warranted, and to assist in determining what amount of discipline was appropriate. The Carrier asserts, however,

that the Claimant's work record contained numerous entries showing his work practices, including his attendance record, to be less than acceptable.

As for the Organization's reference to phone records, the Carrier argues that if the Claimant has phone records to introduce, then he should have done so at the investigation. Both the Claimant and his Organization representative confirmed that they were ready to proceed with the investigation. The Carrier points out that no phone records were attached to the instant claim.

The Carrier emphasizes that the Claimant was given clear instructions to call prior to his shift if he was unable to make it to work. The Carrier points out that the Claimant nevertheless made a conscious decision not to report for his assignment on March 6, 2006. Addressing the Claimant's assertion that he left a voice message for his supervisor, stating that he would not be coming to work, the Carrier maintains that even the Claimant was unable to state when that message was left. The Carrier goes on to assert that given the Claimant's admitted reputation for mumbling and the lack of reliability of his cell-phone messaging, it is extremely irresponsible for the Claimant to attempt to mark off work without speaking with a live person.

The Carrier argues that the transcript proves that the Claimant was afforded a fair and impartial investigation. The hearing officer neither pre-judged the Claimant's guilt, nor offered testimony about the incident. The Claimant was represented by a duly accredited representative of the Organization, and he was given an opportunity to prepare his case, to introduce evidence on his behalf, and to confront and cross-examine witnesses.

The Carrier ultimately contends that the instant claim is without merit, and it should be dismissed 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 fact that the Claimant missed one day of work.

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 failing to follow instructions when he failed to notify his supervisor that he was going to be absent from his position on March 6, 2006.

The action by the Claimant violated Carrier Rule B. The record reveals that the Claimant had been instructed to call before 7 a.m. on a day in which he was going to be absent. The Claimant admitted in his testimony that he did not call in on the day of work. He stated that he called the day before, but the records did not reveal that he did. The Claimant failed to bring in the records that he believed would support his version of the facts.

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 Claimant in this case had been working for the Carrier for four and one-half years. Although the Claimant was guilty of the offense with which he was charged in this case, this Board finds that the action taken by the Carrier was unreasonable and arbitrary. The Claimant was deserving of severe discipline, but dismissal was not appropriate under the circumstances. This Board orders that the Claimant be reinstated, but without back pay. The period that the Claimant was off work shall be considered a lengthy disciplinary suspension.

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AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, 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