

**PUBLIC LAW BOARD NO. 6043**

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**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

**Case No.: 380**

**Award No.: 380**

**vs.**

**ILLINOIS CENTRAL RAILROAD COMPANY**

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

1. The discipline [ten (10) working days’ actual suspension from service, time already served] imposed upon Mr. R. Pegg for violation of USOR - General Rule B - Reporting and Complying with Instructions in connection with an alleged failure to comply with instructions from his supervisor and refused to work on September 8, 2016 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement [System File C 16 09 22 (125)/IC-BMWED-2016-00154 ICE].
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Pegg 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.

At the time of the dispute herein, Claimant was working as a bridge welder in the Carrier’s Maintenance of Way department. Late in the day on September 8, 2016, Claimant was instructed by his supervisor to weld five splice plates on the piles in Bent 4. Claimant objected to this direction and told the supervisor that he would perform the welding on Monday morning.

On September 9, 2016, 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 your responsibility, if any, in connection with an incident that occurred at approximately 0630 hours Thursday September 8, 2016 at or near Bridge Mile

**Post 381.40 on the Memphis Subdivision in Woodstock, TN, throughout the day when you allegedly did not comply with instructions from your supervisor and specifically from 1500-1700 when you allegedly refused to work and whether you violated any Company rules, regulations and/or policies in connection with the incident.**

**After a formal investigation on September 13, 2016, Claimant was found in violation of USOR Rule B-Reporting and Complying with Instructions and assessed Ten (10) Working Days Actual Suspension From Service.**

**USOR Rule B provides,**

**B. REPORTING AND COMPLYING WITH INSTRUCTIONS. Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with manager-issued instructions applying to their duties.**

**The Carrier contends that the credible testimony and substantial evidence contained in the investigation transcript firmly established that Claimant was in violation of USOR Rule B. The Carrier contends that Claimant admitted through his own testimony that he failed to perform the work requested of him. The Carrier contends that Claimant's explanation for not performing this work was that there were only 1½ hours left in the workday, which is not a valid excuse for his refusal.**

**The Carrier contends that Claimant was provided a fair and impartial investigation, that the charges were proven, and that fair and just discipline was assessed. The Carrier contends that two months prior to this incident, Claimant was assessed a five-day suspension. The Carrier contends that the nature of the violation and Claimant's past disciplinary history warrants the discipline imposed.**

**The Organization contends that the Carrier has failed to meet its burden of proof. The Organization contends that Claimant never refused the supervisor's instruction, but only asked if the work could wait until Monday morning. The Organization contends that the request came very late in Claimant's workday and Claimant had already begun putting his tools away for the day. The Organization contends that Claimant testified that when he asked to wait until Monday, the foreman did not object.**

**The Organization further contends that even if the Carrier proved the charges leveled against Claimant, the discipline imposed by the Carrier was arbitrary and unwarranted. The Claimant is a veteran employee with 17 years of service.**

**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.**

The Carrier's witnesses testified that when directed to weld the plates, Claimant ignored the supervisor's instructions and instead picked up his tools for the day. Claimant testified that he told the supervisor that he was not trying to be insubordinate but he was hot and asked if he could wait until Monday to do the work. The assistant bridge foreman confirmed that when Claimant asked him if the welds could wait until Monday, he replied, "Just do what you want to do."

The record demonstrates that the assistant bridge foreman acquiesced to Claimant's request that he be allowed to finish the welds on Monday morning. He testified that Claimant made clear that he was not trying to be insubordinate. Thus, this Board finds that the Carrier has not presented substantial evidence that Claimant was in violation of USOR Rule B, because although Claimant was instructed to perform the welds on Friday afternoon, the supervisor agreed that the work could wait until Monday morning.


### AWARD

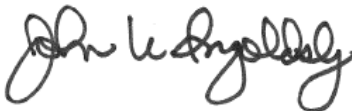
Claim sustained.

### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 60 days following the postmark date the Award is transmitted to the parties.

  
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Kathryn A. VanDagens, Neutral Member

  
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Ross Glorioso, Organization Member

  
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John Ingoldsby, Carrier Member

Dated: August 12, 2021