

**PUBLIC LAW BOARD NO. 6043**

---

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

**Case No.: 382**

**Award No.: 382**

**vs.**

**ILLINOIS CENTRAL RAILROAD COMPANY**

---

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

1. The discipline [thirty (30) working days actual suspension from service] imposed upon Mr. T. Bridges for violation of USOR – Rule 1003 – Track Authority, USOR - General Rule C – Alert and Attentive, On-Track Safety Rules – Rule 100 – Fouling the Track and On-Track Safety Rules – Rule 300 – Job Briefings in connection with allegations that Mr. Bridges occupied unprotected track on November 7, 2016 was arbitrary, excessive and in violation of the Agreement (System File 16 11 29/IC-BMWED-2017-00040 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Bridges shall 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 established and holds seniority within the Carrier’s Maintenance of Way Department. At the time of the events giving rise to this dispute, Claimant was working as a junior tamper operator. On November 7, 2016, Claimant was filling in for the welder helper and assisting welder D. Moore. When they both arrived at the job site, Claimant requested and obtained track protection from his computer in the truck in accord with instructions given by Moore. Unbeknownst to Claimant, Moore had requested track authority on the wrong track and had informed Claimant, incorrectly, that he had authority on main one.

On November 8, 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 1345 hours Monday, November 7, 2016 at or near Mile Post 392.1 on the Shelby Subdivision in Memphis, TN, which resulted in allegedly occupying unprotected track and whether you violated any Company rules, regulations and/or policies in connection with the incident.**

**After a formal investigation on November 11, 2016, Claimant was found in violation of USOR Rule 1003-Track Authority; USOR General Rule C-Alert and Attentive; On-Track Safety Rules, Rule 100-Fouling the Track; and On-Track Safety Rules, Rule 300-Job Briefings and assessed a Thirty (30) Working Days Actual Suspension From Service.**

**The Carrier contends that it has demonstrated with substantial evidence that Claimant was in violation of its rules. The Carrier contends that there is no dispute as to the facts of the case as Claimant has testified that Claimant failed to secure the correct track authority prior to occupying the track area. The Carrier acknowledges that welder Moore has taken responsibility for the error but contends that Claimant also had an obligation to ensure proper track authority. The Carrier contends that if Claimant had properly verified his own track protection, he would have realized that Moore obtained protection for the incorrect track. The Carrier contends that Claimant failed to follow the rules designed for the safe and efficient operation of the railroad and was guilty of occupying unprotected track.**

**The Carrier contends that the thirty days actual suspension is in line with the mandatory 30-day suspension required by the FRA for Track Authority violations and was neither arbitrary nor excessive considering Claimant's violations. The Carrier contends that both members of the two-man crew were equally culpable for the protection failure.**

**The Organization contends that the discipline imposed on Claimant was clearly excessive, as Claimant was not aware that welder Moore, the employee in charge, had track authority on the wrong track. The Organization contends that Claimant, who was filling in, was entitled to trust that the EIC would provide him with a proper job briefing and proper track authority. The Organization contends that it was improper to penalize both members of the crew equally, as Claimant's fault was clearly less than that of the EIC. The Organization contends that the penalty was excessive as Claimant accrued 16 years of service with the Carrier with only two prior instances of discipline.**

**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 has provided substantial evidence of Claimant's rule violation. As a member of the two-man crew, he was also responsible to ensure that proper track authority was obtained. The Carrier rightly depends on all employees who are on the track to ensure that they are working safely and within proper track protection. Although no one was injured, the**


potential for injury or death cannot be overlooked. Moore admitted that he obtained protection on the wrong track and Claimant admitted that he did not recognize Moore's error. Therefore, the Carrier has proven the violation.

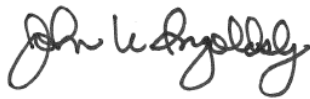
Further, this Board does not see a reason to disturb the penalty assessed by the Carrier. Proper Track authority is the responsibility of every employee on the track. Claimant was no less culpable than Moore and the penalty assessed was consistent with other track authority violations.

**AWARD**

Claim denied.

  
\_\_\_\_\_  
Kathryn A. VanDagens, Neutral Member

  
\_\_\_\_\_  
Ross Glorioso, Organization Member

  
\_\_\_\_\_  
John Ingoldsby, Carrier Member

Dated: August 12, 2021