

PUBLIC LAW BOARD NO. 6043

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

Case No.: 383

Award No.: 383

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. D. Moore 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. Moore occupied unprotected track on November 7, 2016 was arbitrary, excessive and in violation of the Agreement (System File 16 11 29/IC-BMWED-2017-00041 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Moore 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 track welder. On November 7, 2016, Claimant was performing service on behalf of the Carrier with the assistance of junior tamper operator T. Bridges. Claimant was responsible for obtaining track authority. Claimant obtained authority on the wrong track and informed Bridges, 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. A Waiver was previously signed on the incident by you and was retracted on Friday, February 17, 2017 resulting in the scheduling of this investigation.

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 was 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 admitted that he failed to secure the correct track authority prior to occupying the track area. The Carrier contends that Claimant failed to follow the rules designed for the safe and efficient operation of the railroad.

The Carrier contends that Claimant did not refute or deny any charges or rule violations made against him and accepted full responsibility for his actions. The Carrier contends that Claimant created a serious safety issue and if the train crew had not put the train into emergency, the consequences could have been grave.

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 was arbitrary and unwarranted and thus, must be overturned. The Organization contends that the discipline was excessive in light of the various mitigating circumstances, including that Claimant accepted full responsibility for incorrectly obtaining track authority on main two and informing his fellow employe that he had authority on main one during their job.

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 proved Claimant's violations with substantial evidence. Claimant admitted that he improperly obtained authority on the wrong main track, a serious safety violation. Where there is an admission of guilt, there is no need for further proof. This Board finds that sufficient evidence exists to support the findings against Claimant.


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 and occupying unprotected track is a very serious violation. The penalty assessed was consistent with other track authority violations.

AWARD

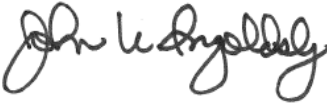
Claim denied.



Kathryn A. VanDagens, Neutral Member



Ross Glorioso, Organization Member



John Ingoldsby, Carrier Member

Dated: August 12, 2021