

PUBLIC LAW BOARD NO. 6043

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

Case No.: 384

Award No.: 384

vs.

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The discipline [fifteen (15) working days actual suspension from service and fifteen (15) working days deferred suspension for one (1) year] imposed upon Mr. K. Kincaid for violation of LIFE U.S. Safety Rules – Section III: Engineering Rules, Recommended Practices. PPE – E-19 Motor Vehicle Operation, USOR – General Rule A – Safety and USOR – General Rule B – Reporting and Complying with Instructions in connection with allegedly speeding ten (10) or more miles per hours (MPH) in excess of the road speed limit of fifty-five (55) MPH on November 30, 2016 and December 2, 2016 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C 16 12 20/IC-BMWED-2017-00013 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Kincaid 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 and was working as a track foreman at the time of the incidents herein. Once on November 30, 2016, and twice on December 2, 2016, the GPS unit in the truck assigned to Claimant was flagged at traveling in excess of the posted speed limit.

On December 2, 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 0511 hours, Friday, December 02, 2016 at or near US-49, Hattiesburg, Mississippi, and/or Friday December 02, 2016 at approximately 0351 hours at or near 2341 Florence-Byram Road, Florence, Mississippi, and/or Wednesday, November 30, 2016 at approximately 1201 at or near US-49, Collins, Mississippi, when you were allegedly speeding 10 or more mph in excess of the road speed limit of 55 mph while driving CN vehicle 172530 and whether you violated any Company rules, regulations and/or policies in connection with the incident.

After a formal investigation on December 13, 2016, Claimant was found in violation of LIFE US Safety Rules-Section III, Engineering Rules, Recommended Practices; and PPE-E-19 Motor Vehicle Operation USOR General Rule A-Safety and USOR General Rule B-Reporting and Complying with Instructions; and was assessed a 15 Working Days Actual Suspension From Service and a 15 Working Days Deferred Suspension for one year. As a result of the discipline, Claimant was also required to serve a previously deferred ten working days suspension.

The Carrier contends that it has presented credible testimony and substantial evidence that Claimant was in violation of US Safety Rules-Section III, Engineering Rules, Recommended Practices, and PPE-E-19 Motor Vehicle Operation, USOR General Rule A-Safety, USOR General Rule B-Reporting and Complying with Instructions in connection with an incident on November 30, 2016 and two incidents on December 2, 2016, where he operated a Company vehicle in excess of ten miles per hour above the roadway speed limit.

The Carrier contends that Claimant admitted to operating the vehicle in excess of the speed limit, albeit at a rate of 5 mph over the posted speed limits when operating the Carrier's vehicle. The Carrier contends that even though Claimant denies the violation, the GPS unit was checked and was operating accurately.

The Carrier contends that the discipline imposed was neither harsh nor excessive. The Carrier contends that it wants its employees to perform safely. The Carrier contends that the degree of carelessness shown by Claimant justified the discipline imposed for this serious rule violation.

The Organization contends that the Carrier has failed to show that Claimant violated any of the Carrier's rules. The Organization points out that this very GPS unit has malfunctioned in the past. The Organization contends that the Carrier witness could not testify with any certainty the vehicle's GPS had been fixed and working properly on November 30, 2016 and December 2, 2016. The Organization contends that it has shown that the unit must have been malfunctioning, as the recorded dates and times are not accurate. The Organization contends that it has shown that Claimant was not in the recorded location at the time stamped. The Organization contends that the level of discipline was arbitrary and unwarranted.

It was the Carrier's burden to prove by substantial evidence that Claimant was guilty of violating the Rules as charged. In support of the charges, the Carrier offered the testimony of Supervisor Fullerton, who testified that he was notified that the vehicle assigned to Claimant had been flagged for operation in excess of the posted speed limit on three occasions on November 30 and December 2, 2016. The Supervisor had no firsthand knowledge that Claimant was operating the Carrier's vehicle at these times or places.

The Organization presented contradictory evidence from Claimant and two other employees that he was not operating the vehicle at the identified times and places. Claimant testified that on the occasion of November 30, 2016 at 12:01 pm, he was at work on the track and not in the identified location.

The GPS unit in Claimant's truck was known to have malfunctioned in the past. On the previous occasion, Claimant was alleged to have operated in excess of the speed limit, but when the unit was checked, it was malfunctioning. The GPS unit was checked again on December 2, because a technician believed that the unit was recording in kilometers rather than miles, making it appear that the driver was going faster than he actually was.

Fullerton did not personally observe Claimant operating the vehicle and did not have personal knowledge as to where and when he operated the truck. On the other hand, the Organization called witnesses who testified that Claimant was not driving in excess of the posted limit and was not driving the vehicle at the posted times. The Carrier offered no evidence to rebut this sworn testimony.

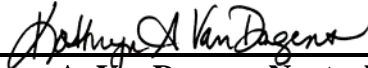
This Board has reviewed the evidence and testimony in the case, and we find that the Carrier has failed to meet its burden of proof that Claimant was guilty of violating the charged rules on November 30 and December 2, 2016. The GPS unit in Claimant's truck was known to malfunction and its data was the only evidence offered by the Carrier of Claimant's violations. The Organization offered firsthand testimony that the readings were inaccurate which was not rebutted by the Carrier.

AWARD

Claim sustained.

ORDER

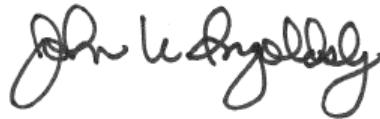
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 60 days following the postmark date the Award is transmitted to the parties.



Kathryn A. VanDagens, Neutral Member



Ross Glorioso, Organization Member



John Ingoldsby, Carrier Member

Dated: August 12, 2021