

**PUBLIC LAW BOARD NO. 6043**

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

**Case No.: 385**

**Award No.: 385**

**vs.**

**ILLINOIS CENTRAL RAILROAD COMPANY**

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

- 1. The discipline [five (5) working days actual suspension from service and five (5) working days deferred suspension for one (1) year] imposed upon Mr. T. English for violation of On-Track Safety Rules - Rule 300 - Job Briefings, On-Track Safety Rules - Rule 500 - Types of Protection, USOR - General Rule W - Job Briefings in connection with having an incomplete Job Briefing/Peer to Peer Communication and an alleged failure to place a derail 150 feet from work area on February 8, 2017 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File 17 03 09/IC-BMWED-2017-00048 ICE).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant T. English 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 holds seniority within the Carrier’s Maintenance of Way Department. On February 8, 2017, Claimant was assigned as Trackman at or near Mile Post 385.6 on the Baton Rouge Subdivision. Claimant was assigned to place derail devices in the work area to establish protection for the work crew. An audit team determined that instead of placing the derail devices 150 feet from the work area, Claimant placed the derail at only ninety feet from the work area. Claimant also was found to have failed to have a proper peer-to-peer job briefing with the other members of the crew resulting in a failure to communicate the work plans for the team.**

**On February 17, 2017, 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 1300 hours, Wednesday, February 8, 2017 at or near Mile Post 385.6 on the Baton Rouge Subdivision at/or near Geisar, LA, which resulted in you allegedly having an incomplete job briefing/peer to peer communication and/or allegedly failing to place a derail 150 from work area 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 February 21, 2017, Claimant was found in violation of On-Track Safety Rules, Rule 300-Job Briefings; On-Track Safety Rules, Rule 500-Types of Protection; and USOR General Rule W-Job Briefings, and assessed Five (5) Working Days Actual Suspension From Service and Five (5) Days Deferred Suspension For One (1) Year.**

**The Carrier contends that it has produced substantial evidence of Claimant's violation. The Carrier contends that Claimant placed the derail only 90 feet, rather than 150 feet, from the work area, placing himself, the workers, and a train crew in jeopardy. The Carrier points out that Claimant placed the derail at almost half the distance required to keep employees safe.**

**The Carrier contends that there is no dispute, as Claimant testified that he failed to place the derail in the proper location and failed to conduct a proper job briefing, as he was required. The undisputed testimony of Track Supervisor James Ellis established that after he arrived to the job site, he personally measured the track and determined that the derails had only been placed 90 feet away from the work area.**

**The Carrier contends that based on the nature of the violation and Claimant's past disciplinary record, the penalty assessed is appropriate and in accord with progressive discipline principles. The Carrier contends that a five-day suspension is not excessive for a proven safety violation.**

**The Organization contends that both Claimant and the employee in charge testified they believed that the derail was placed 150 feet from the work area. Claimant trusted that the employee in charge ("EIC") was correct. The Organization further contends that the EIC was responsible for filling out the job briefing book and that he failed to do so correctly. Claimant testified that the EIC gave correct oral instructions, which Claimant believed were accurately written down. The Organization contends that Claimant was forthright, open and honest regarding the events of February 8, 2017.**

The Organization contends that Claimant is a dedicated hardworking employee with nearly 11 years of service. Therefore, the Organization contends that the discipline imposed was arbitrary and unwarranted and a coaching and counseling session would have been more in line with progressive discipline policies.

The Board has carefully reviewed the record and finds that the Carrier has demonstrated Claimant's violation with substantial evidence. Claimant admitted that the job briefing was incomplete but he signed it without noticing that designation for "Train Approach Warning" had not been marked.


With respect to the charge of improper job briefing, Claimant has admitted to the conduct. Where there is an admission of guilt, there is no need for further proof. With respect to the placement of the derail, testimony was provided that the derails were set only 90 feet from the work area. Claimant testified that they were 150 feet from the area and he measured the distance by "counting steps."

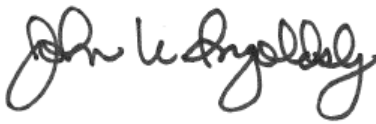
In the face of such contradictory testimony, it is not the function of this Board to pass upon the credibility of witnesses or to weigh the evidence. We find that sufficient evidence exists to support the findings against Claimant. Although the Organization asserted that Claimant was deferring to the EIC in both instances, safety is the job of each employee on the rails. We find no reason to disturb the disciplinary penalty.

**AWARD**

Claim denied.

  
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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