

PUBLIC LAW BOARD NO. 6043

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

Case No.: 406

Award No.: 406

vs.

ILLINOIS CENTRAL RAILROAD COMPANY

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

- 1. The discipline [fifteen (15) days actual suspension from service] imposed upon Mr. S. Johnson for violation of E-15 Lockout/Tagout on January 30, 2018 was arbitrary, excessive and in violation of the Agreement (System File 18 03 14/IC-BMWED-2018-00037 ICE).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant S. Johnson 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 January 30, 2018, a Carrier manager conducted an inspection for proper tag-out procedure of ride-on liquid tie plugger machine number RTP0312 in the Homewood Shop, where Claimant was working as a work equipment repairman.

The inspection revealed the tag used to lock-out the machine from operation was in place, which was identified with Claimant’s name on the front of the tag. No defects were reported on the back of the tag in the “Remarks” section. The manager reviewed the logbook to see if the defects were reported in the logbook but found no entries. Claimant admitted that he was not aware of the mandate to make entries in the logbook whenever a machine is locked out.

On February 8, 2018, 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 0900 hours, January 30, 2018 at or near Homewood, IL, in which you allegedly had the liquid plugging machine tagged out and it was found no defects had been logged in the log book, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

After a formal investigation on February 22, 2018, Claimant was found in violation of E-15 Lockout/Tagout Violation Type: Level 2 and assessed 15 Days Actual Suspension From Service.

The Carrier contends that it has produced substantial evidence of Claimant's violations. The Carrier contends that Claimant had tagged out the liquid plugging machine but failed to make the required entries in the logbook noting the defects and the basis for the tag-out, as required. The Carrier contends that Claimant admitted that he tagged the machine but did not note the defects in the logbook.

The Carrier contends that there is no question that Claimant failed to follow instructions when he did not make the required entries in the logbook indicating the reason for the lock-out and the defects with the equipment. The Carrier contends that its discipline policy classifies this as a Level 2 Rule Violation. Due to the seriousness of the disregard of these rules and Claimant's lack of prior discipline, the discipline imposed was appropriate.

The Organization contends that the discipline imposed on Claimant was clearly excessive in light of the mitigating circumstances. The Organization contends that Claimant was forthright and honest and admitted that he was unfamiliar with this part of the Carrier's lockout/tagout procedure. The Organization contends that Claimant made clear that if he had been aware of it, he would have entered the requisite information into the logbook.

The Organization contends that Claimant accrued nearly eight years of service with the Carrier and had not received any prior discipline before the events giving rise to the instant dispute. Therefore, the penalty was unwarranted.

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.

Here, there is no dispute that Claimant failed to log the machine's defects in the logbook, in violation of the Carrier's rules. Claimant has admitted as much. 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.

Under the Carrier's discipline policy, this violation is classified as a Violation Level 2. Although the Organization contends that the penalty was excessive, it provided no evidence that a lesser penalty was warranted. It argued that Claimant made the error because he was unfamiliar with this part of the Carrier's lockout/tagout procedure. As a rules qualified employee, it was Claimant's responsibility to know and follow the Carrier's operational rules. This Board sees no reason to disturb the disciplinary penalty imposed by the Carrier.

AWARD

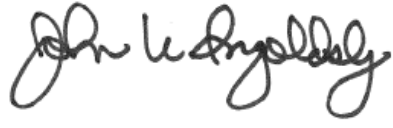
Claim denied.



Kathryn A. VanDagens, Neutral Member



Ross Glorioso, Organization Member



John Ingoldsby, Carrier Member

Dated: August 12, 2021