

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 41

STATEMENT OF CLAIM:

Claim of Trackman K.W. Dick that his "... personal record be cleared of the charge immediately and that he be made whole in accordance with Rule 33(I)" for his alleged violation of U.S. Operating Rule, General Rule B when he allegedly failed to comply with instructions issued by a supervisor when he failed to call in his absence prior to the start of the work-day on March 31, 2006. Organization file number: SA 053006.1 CN-IC K.W. Dick (Investigation). Carrier file number: IC 134 106 19.

FINDINGS:

By letter dated April 5, 2006, the Claimant was directed to attend a formal hearing and investigation on charges that the Claimant allegedly had failed to follow his supervisor's instructions to obtain permission to be absent from his position on March 31, 2006. After a postponement, the investigation was conducted on May 4, 2006. By letter dated May 22, 2006, the Claimant was informed that as a result of the hearing, he had been found guilty as charged, and that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that the Claimant's personal record was not used to determine innocence or guilt. Instead, the Claimant's record was reviewed only as information in the event that discipline was found to be warranted, and to assist in determining the amount of discipline that was appropriate. The Carrier points out that the

Claimant's work record does contain numerous entries that show that his work practices, including his attendance record, were less than acceptable.

The Carrier argues that a thorough review of the transcript proves that the Claimant was afforded a fair and impartial investigation. The Carrier maintains that the hearing officer neither pre-judged the Claimant's guilt nor offered testimony about the incident. Moreover, the Claimant was represented by a duly accredited representative of the Organization, and he was given the opportunity to prepare his case, to introduce evidence on his own behalf, and to confront and cross-examine witnesses.

The Carrier ultimately contends that the instant claim is without merit and should be denied in its entirety.

The Organization initially contends that it is well-established in the railroad industry that the purpose of administering discipline is not to inflict punishment, but rather to rehabilitate, correct, and guide employees in the proper performance of their duties. The Organization points out that Board Awards consistently have held that the severity of the punishment must be reasonably related to the gravity of the offense. The Organization recognizes the Carrier's concern in the instant alleged offense, but maintains that the penalty of dismissal is improper, arbitrary and harsh in light of the fact that the Claimant missed one day of work.

The Organization asserts that proof of a rule violation, if it exists, does not by itself grant the Carrier *carte blanche* authority to arbitrarily assess punishment. The Organization insists that the totality of the circumstances must be considered. Moreover, the unquestionable lack of facts in this instance also must be considered. The

Organization argues that there can be no question that the record firmly establishes that the Carrier's decision to assess discipline in this case was unwarranted, inappropriate, and non-progressive in its application. The Organization contends that the Carrier's decision to discharge the Claimant therefore should be vitiated.


The Organization argues that an objective evaluation of the transcript conclusively establishes that the discipline imposed cannot be validly upheld. The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is not sufficient evidence in the record to support the finding that the Claimant was guilty of violating U.S. Operating Rule, General Rule B, when he allegedly failed to comply with instructions issued by his supervisor and failed to call in his absence prior to the start of work on March 31, 2006. The Carrier bears the burden of proof in cases of this kind, and the record compiled during the hearing is insufficient to support the Carrier's position that the Claimant acted in violation of Carrier rules. Therefore, the claim must be sustained. It should be noted, however, that the Claimant shall not be returned to work or entitled to back pay because this Board is upholding his discharge in Case No. 43 this same date.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER



CARRIER MEMBER

DATED: 11-14-07

DATED: Nov. 14, 2007