

PUBLIC LAW BOARD NO. 6043

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

Case No.: 420

Award No.: 420

vs.

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The discipline [Level 3 Violation thirty (30) days actual suspension from service] imposed upon Mr. J. Ramage for violation of USOR - C - Alert and Attentive, USOR - M - Railroad Property and L.I.F.E. Section 3 Core Safety Rules # 1 h. and i. in connection with allegedly using excessive speed and/or displayed disregard for road conditions on February 11, 2018 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File 18 03 20/IC-BMWED-2018-00031 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Ramage 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 and at the time of these events was working as a track inspector. On February 11, 2018, Claimant was driving a Company owned truck to his work location. At approximately 0629 hours, at or near Tchula, Mississippi, the vehicle's tires lost traction in water on the roadway and Claimant lost control of the vehicle and rolled the vehicle off the road surface. Claimant was unharmed and notified his supervisor of the vehicle accident.

On February 21, 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 0629 hours, February 11, 2018, at or near Tchula, MS, when you allegedly were using excessive speed and/or displayed disregard for road conditions, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

After a formal investigation on March 16, 2018, Claimant was found in violation of USOR C-Alert and Attentive, USOR M-Railroad Property, and LIFE Section II-Core Safety Rules #1 h and i, and was assessed 30 Days Actual Suspension.

The Carrier contends that it has presented substantial evidence proving Claimant's violations. The Carrier contends that the evidence shows that Claimant did not comply with a number of traffic signs, operated his vehicle well in excess of the established speed limits, and did so in the hazardous conditions of both a work zone and inclement weather conditions. These actions resulted in a serious accident, which fortunately did not cause any serious injury. The Carrier contends that it has shown that Claimant failed to be alert and attentive when he had a rollover accident in the rain due to speeding. The Carrier contends that Claimant's actions are not disputed in the record.

The Carrier contends that the current incident is properly classified as a Level 3 Rule Violation. The Carrier contends that the level of discipline imposed was consistent with its discipline policy. The Carrier contends that a Level 3 Violation is designated to receive a thirty day actual suspension from service, as Claimant had no other violations on his record within the thirty-six month review period.

The Organization contends that the discipline imposed on Claimant was clearly excessive in light of the mitigating circumstances. The Organization contends that Claimant did not engage in willful behavior, but simply misunderstood the road signs, believing that he did not have to slow down because it was Sunday and no workers were present.

The Organization points out that Claimant has been driving a Company vehicle since 2013 without incident. The Organization contends that Claimant has been in the Carrier's service for 13 years without a disciplinary incident. The Organization contends that Claimant was forthright and honest during the investigation, admitting that he was speeding because he misunderstood the signage.

Finally, the Organization contends that the penalty was disparate because the Carrier has offered waivers consisting of a thirty (30) day record suspension to other employees who have been charged with alleged Level 3 rule violations, but did not offer one to Claimant.

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, Claimant has admitted to driving in excess of the modified speed limit in a work zone in the rain, causing a rollover accident. We find that there is no question that Claimant committed the rule violations as he was charged. The Carrier has presented substantial evidence of Claimant's violations.

The remaining issue is the quantum of discipline imposed. The Organization argues that the penalty is excessive as other employees were offered the chance to sign a waiver and serve only a "record" suspension. The Carrier has not said why no waiver was offered to Claimant, but the violations in the submissions offered by the Organization of others who were offered the opportunity to sign a waiver are not similar enough to Claimant's violation that a case of disparate treatment can be found.


In all, the Board finds no reason to disturb the penalty imposed by the Carrier. Claimant admitted that he failed to slow down while driving the Company vehicle in the rain through a work zone. As a result, he ended up in a rollover accident. Fortunately, no one was hurt, but the penalty was not excessive given the potential for serious injury.

AWARD

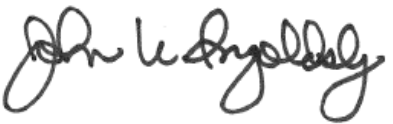
Claim denied.



Kathryn A. VanDagens, Neutral Member



Ross Glorioso, Organization Member



John Ingoldsby, Carrier Member

Dated: August 12, 2021