

PUBLIC LAW BOARD NO. 6043

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

Case No.: 425

Award No.: 425

vs.

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The discipline (dismissal) imposed upon Mr. S. Griffith for an alleged violation of U.S.O.R. Operating Rules: General Rule B. Reporting and Complying with Instructions and U.S.O.R. Operating Rules: General Rule H. Furnishing Information and Conduct on August 21, 2019 was arbitrary, excessive and in violation of the Agreement (System File 19 09 12 (043)/IC-BMWED-2019-00051 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Griffith 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.

At the time of the incident herein, Claimant was working as a trackman in the Carrier's Maintenance of Way department. On August 21, 2019, Claimant reported two minutes late for service for his position as trackman. The Company manager directed him to report his lateness to the Attendance Management Center (AMC) for documentation of the incident, which Claimant initially did not do. Claimant eventually called the AMC to report his late arrival.

On August 22, 2019, 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 0703 hours, August 21, 2019, at or near Jackson, MS, in which

you allegedly arrived late and/or failed to follow a directive and/or allegedly being insubordinate, argumentative and using foul language, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

After a formal investigation on August 23, 2019, Claimant was found in violation of USOR Operating Rules General Rule B-Reporting and Complying with Instructions, and USOR Operating Rules: General Rule H-Furnishing information and Conduct. and was dismissed from the Carrier's service.

The Carrier contends that it has produced substantial evidence showing that Claimant was in violation of its rules when he arrived late for service, failed to follow a directive, was insubordinate and argumentative, and used foul language. The Carrier contends that if Claimant thought the manager was wrongly asking him to call the AMC, his remedy was to obey and file a grievance.

The Carrier contends that Claimant received a fair and impartial hearing.

The Carrier contends that Claimant's refusal to follow the manager's directive constituted insubordinate behavior, which is listed as a Level 4 Rule Violation which is serious enough to warrant immediate termination. The Carrier contends that based on the nature of the violation and Claimant's disciplinary history, the penalty assessed was appropriate and in accordance with progressive discipline.

The Organization contends that Claimant admitted to being two minutes late to work and that he eventually cooperated with the manager's instruction and reported his tardy arrival to the AMC. The Organization contends that the Carrier has failed to consider the mitigating circumstances surrounding Claimant's violation.

The Organization contends that the penalty imposed was clearly excessive in light of the circumstances of this case. The Organization contends that Claimant was entitled to the benefit of progressive discipline in light of his 17 years of unblemished service for the Carrier.

The Organization contends that the Carrier's discipline policy provides that the rule violation is serious enough to result in termination but does not make the penalty automatic. The Organization contends that because Claimant had no prior instances of discipline, the penalty was harsh and excessive.

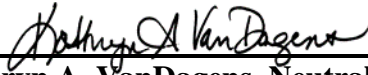
The Board has carefully reviewed the record in this matter and has determined that the Carrier has not shown that Claimant's conduct was insubordinate to a level which justified his dismissal in light of his 17 years of unblemished service. The Organization has demonstrated that there were significant mitigating circumstances that this Board believes should be considered. Based upon the unique circumstances of this case and without precedent for any future similar claims, this Claimant is returned to duty without back payment, but with all other rights and privileges intact.

AWARD

Claim sustained in accordance with the Findings.

ORDER

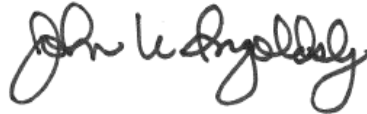
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 60 days following the postmark date the Award is transmitted to the parties.



Kathryn A. VanDagens, Neutral Member



Ross Glorioso, Organization Member



John Ingoldsby, Carrier Member

Dated: August 12, 2021