

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 43

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 H when he allegedly failed to comply with instructions issued by a supervisor when he failed to comply with instructions issued by a supervisor when (sic) refused to provide a statement to the Risk Manager concerning his alleged personal injury on April 24, 2006. Organization file number: SA 053106.2 CN-IC K.W. Dick (Investigation). Carrier file number: IC 134 106 25.

FINDINGS:

By letter dated April 27, 2006, the Claimant was directed to attend a formal hearing and investigation on charges that the Claimant allegedly had been insubordinate and/or failed to follow his supervisor's instructions on April 25, 2006. The investigation was conducted, as scheduled, 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 of violating Carrier's General Operating Rule H when he failed to follow his supervisor's instructions and provide a statement to the Risk Manager regarding the personal injury that the Claimant sustained on April 24, 2006. The letter further informed the Claimant 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 guilt or innocence. The Carrier asserts that the Claimant's record was reviewed only as information in the event discipline was found to be warranted, and to assist in determining the appropriate amount of discipline. The Carrier points out, however, that the Claimant's work record contained numerous entries showing his work practices to be less than acceptable.

The Carrier then addresses the Organization's position that the Claimant never refused to give a statement, but merely wanted his attorney present when he did. The Carrier insists that the transcript demonstrates that the Claimant clearly was told that his failure to provide a statement would result in his removal from service, as well as the initiation of an investigation. Moreover, the Claimant clearly was advised of Rule H, but he nonetheless continued to refuse to provide a statement. The Carrier emphasizes that it is not required to consult with an employee's attorney for a statement.

The Carrier maintains that the Claimant was afforded a fair and impartial investigation. The hearing officer neither pre-judged the Claimant's guilt, nor did he offer testimony about the incident. The Carrier points out that 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 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 Claimant not giving a statement.

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 sufficient evidence in the record to support the finding that the Claimant was

guilty of insubordination when he failed to comply with the instructions issued by his supervisor to give a statement to the Risk Manager concerning his alleged personal injury on April 24, 2006. On Page 19 of the transcript of the hearing, the Claimant was asked if he gave a statement, and he said "No." The Claimant was asked if he was instructed to give a statement, and he said "Yes." The Claimant's own testimony is evidence that the Claimant was guilty of failing to comply with an instruction given by his supervisor.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

Insubordination is considered to be one of the most serious offenses on the railroad, or in any employment situation. Employees are expected to abide by the instructions; and if they do not, they often face dismissal. Given the seriousness of the offense in this case of which the Claimant was clearly found guilty, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER



CARRIER MEMBER

DATED: 11-14-07

DATED: Nov. 14, 2007