

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 44

STATEMENT OF CLAIM:

Claim of Foreman K.E. Waller 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 Rules, General Rule H for allegedly falsifying company records and for his alleged instructing of employees to violate bridge construction standards from March 13 to May 19, 2006. Organization file number: SA 0718606.0 CN-IC K. Waller (Investigation). Carrier file number: IC-134-106-26.

FINDINGS:

By letter dated May 19, 2006, the Claimant was directed to attend a formal hearing and investigation on charges that the Claimant allegedly had falsified company records and/or information furnished to the Carrier in connection with work performed from March 13 through May 19, 2006, at Milepost 7.7, Baton Rouge Subdivision. After a postponement, the investigation was conducted on June 13, 2006. By letter dated June 29, 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 by falsifying company records and by instructing employees to violate bridge construction standards. 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 Organization incorrectly argued that the

Claimant had "no capitious entries" in his personal work record. The Carrier points out that two letters of instructions were issued to the Claimant within the six-month period prior to the events at issue; these letters referenced conduct that was quarrelsome toward and disrespectful of co-workers. The Carrier asserts that the Claimant's record was not used to determine guilt or innocence; instead, the Claimant's record was reviewed only as to information in the event discipline was warranted, and to assist in assessing the amount of discipline that is appropriate.

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.

As for the Organization's argument that the penalty of dismissal was improper, arbitrary, and harsh in light of the Claimant missing the precise blow count on each pile, the Carrier insists that the Claimant did not "miss" the blow count. The Carrier emphasizes that the Claimant admitted to falsifying each blow count record. The Carrier maintains that the safety of its bridges cannot be taken lightly, and this matter is much more serious than the "misdemeanor in the civil arena" that the Organization has cited.

The Carrier points out that this matter concerned the Claimant's actions, and Neu was called as a witness during the investigation. The Organization therefore had every opportunity to question and cross-examine Neu.

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 missing the precise blow count on each pile.

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, because Neu was not investigated, 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 violating U.S. Operating Rules, General Rule H, when he falsified Carrier records and instructed other employees to violate bridge construction standards from March 13 to May 19, 2006. A thorough review of the transcript and other documents included in the record makes it clear that the Claimant acted in violation of the Carrier's rules.

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.

The Claimant in this case was terminated for his wrongful behavior. However, a thorough review of the lengthy record in this case makes it clear that there were other individuals who were responsible for the Claimant's behavior. The Claimant, who had a great record in the past, was acting in violation of the rules in order to please his supervisor. The Claimant did report the wrong information and thereby falsified Carrier records, but the record makes it clear that he did so at the urging of others. Certainly his behavior was not appropriate and for that he deserves discipline. However, this Board is of the belief that discharge was unreasonable and arbitrary given the particular circumstances of this case.

As a result, this Board orders that the Claimant be reinstated to service, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension for his wrongdoing.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be returned to work, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER



CARRIER MEMBER

DATED: 11-14-07

DATED: Nov. 14, 2007