

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 45

STATEMENT OF CLAIM:

Claim on behalf of R.L. Slaughter 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 A, C, and 1005, and On-Track Safety Rules 100 and 400, for which he was assessed a fifteen-day suspension.

FINDINGS:

By letter dated July 18, 2005, the Claimant was directed to attend a formal hearing and investigation to determine the Claimant's responsibility, if any, for his alleged failure to provide proper protection to men and equipment under his work authority on July 14, 2005. After a postponement, the investigation was conducted on August 12, 2005. By letter dated September 22, 2005, the Claimant was informed that as a result of the hearing, he had been found guilty as charged, and that he was being assessed a fifteen-day suspension. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to issue this suspension. The Carrier denied the claim.

The Carrier initially contends that the Claimant acknowledged that he was aware that the Brandt Truck was not properly protected, but he later "thought maybe" that the Brandt Truck had gotten protection. The Carrier asserts that this is not the proper way to protect your equipment and people.

Addressing the Organization's argument that the fifteen-day suspension imposed

in this case was improper, arbitrary, and harsh, the Carrier emphasizes that all factors were considered in the assessment of discipline once findings were made that supported discipline. These factors included the Claimant's personal record. The Carrier argues that a review of the facts and the Claimant's personal record fully support the discipline issued, which cannot be construed as improper, arbitrary, or harsh.

The Carrier maintains that the Claimant was grossly negligent in protecting his equipment and people. The Claimant admitted that he was "rushing, trying to get the train moving," and that the dispatcher "constantly" was asking the Claimant if the machines were in the clear. The Claimant acknowledged that the Brandt Truck was part of his work group, and that he cleared up his track warrant knowing that the Granger was not in the clear.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the transcript makes it clear that the Carrier simply failed to "share the discipline that was awarded so generously" to the Claimant. The Organization asserts that while the Claimant was giving up his track warrant, Granger made no attempt to protect himself by telling either the dispatcher or the Claimant that the Brandt Truck still was on the rail.

The Organization argues that it is well-established in the railroad industry that a carrier's purpose in administering discipline is not to inflict punishment, but to rehabilitate, correct, and guide employees in the proper performance of their assigned tasks. The Organization emphasizes that numerous Board Awards have held that the

severity of the punishment must be reasonably related to the gravity of the offense. Moreover, the certainty of punishment usually is more of a deterrent than the severity of the penalty.

The Organization maintains that in determining whether the amount of discipline imposed was unreasonable, it is necessary to start from the premise that the purpose of discipline is not primarily punitive, but corrective. The Organization recognizes the Carrier's concern in the instant alleged infraction, but it contends that the penalty of a fifteen-day suspension is improper, arbitrary, and harsh in light of the nature of the incident.

The Organization insists that proof of a rule violation, by itself, does not grant the Carrier *carte blanche* authority to arbitrarily assess punishment. The Organization asserts that the totality of the circumstances surrounding the incident must be considered. The Organization argues that the discipline imposed in this case 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 failing to provide proper protection to his men and equipment under his work authority at Milepost 61.8 near McLain, Mississippi, on July 14, 2005. The record is clear that the Claimant believed that the Brandt Truck had received protection, but he did

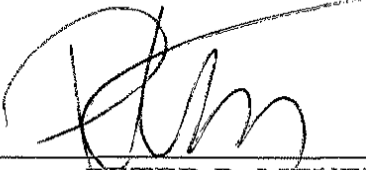
not verify it and, by his action or inaction, the Claimant put his men at risk.

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.

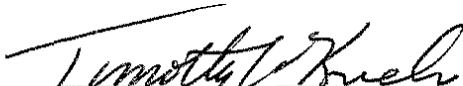
The Hearing Officer, in his letter dated September 22, 2005, in which he issues the fifteen-day suspension to the Claimant, states "due consideration was given to your previous discipline record." There is a reference to the Claimant's personal record in the transcript, and it indicates that the Claimant received a ten-day suspension in 2005 for failing to report an injury to himself promptly and failing to perform work safely. There is also an indication in the Claimant's personal record that he had been terminated in 2002 on an investigation for an unauthorized use of a Carrier telephone credit card but that that discipline had been reduced to an approximately three-week suspension. Given that previous discipline on the Claimant's record, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the Claimant a fifteen-day suspension for this latest offense. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 8-11-08



CARRIER MEMBER
DATED: August 11, 2008