

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 69

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

1. The discipline in the form of a twenty (20) working day suspension with ten (10) days to be held in abeyance for a period of twelve (12) months and ten (10) days to be served immediately imposed upon the Claimant for his alleged violation of U.S. Operating Rules, General Rule A, General Rule C and General Rule D, resulting in his personal injury while working on December 1, 2008 is arbitrary, unwarranted and based upon unproven charges and in violation of the Agreement (System File 090330/IC-BMWED-2009-00007).
2. As a consequence of the violation outlined in Part 1 above, Mr. C. Oliphant is entitled to the full remedy detailed in Rule 33(i) of the Agreement, effective July 1, 2007."

FINDINGS:

By notice dated December 2, 2008, the Claimant was directed to attend a formal investigation and hearing on charges that the Claimant had violated Carrier rules and/or regulations in connection with an incident during which the Claimant suffered a personal injury. The investigation was conducted, after a postponement, on January 15, 2009. By notice dated February 2, 2009, the Claimant was informed that as a result of the investigation, he had been found guilty of violating Carrier Operating Rules, and that he was being assessed a twenty-day suspension, with ten of those days to be held in abeyance for twelve months. The Organization subsequently filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline him. The Carrier

denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence proves the Claimant's guilt, because the hearing was fair and impartial, and because the discipline assessed was not harsh, arbitrary, or an abuse of discretion. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to prove the charges against the Claimant, and because the discipline imposed is excessive, unwarranted, and serves no purpose other than punishment.

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 the Carrier has failed to meet its burden of proof that the Claimant was guilty of violating Carrier safety rules and was not alert and attentive while performing his duties. The record reveals that the Claimant did incur an injury while dismounting a hy-rail on December 1, 2008. The inspection report for the vehicle stated that there were no problems with the vehicle. The Claimant stated that the steps were not working on the date in question. The record does reveal that the Claimant inspected the vehicle on November 17, 2008, and "took no exception" to any of the safety features. However, this accident took place nearly three weeks later and there is no report showing that everything was working properly on the date in question.

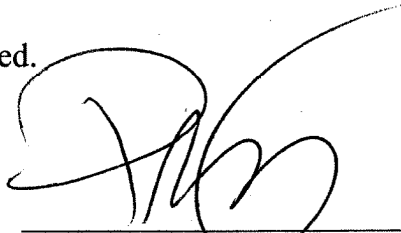
It is fundamental that just because an accident takes place and an employee is injured does not necessarily mean that there was a rule violation. As a matter of fact, in

this case, the Carrier was well aware of the problems with that particular truck and its poor design. After the incident, the Carrier made a new rule requiring the use of the steps. There were no witnesses to this incident and the Claimant reported it right away.

Although the Carrier "believes" that the Claimant should have used extra caution on the date in question, we find that there has been an insufficient showing that the Claimant was not careful in the operation of the vehicle on that date. The Carrier bears the burden of proof in all discipline cases. In this case, the Carrier has failed to meet that burden. Therefore, the claim must be sustained.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: MARCH 31, 2011



ORGANIZATION MEMBER

DATED: MARCH 31, 2011