

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 70

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 served immediately and ten (10) days to be held in abeyance for a period of twelve (12) months imposed upon the Claimant for the alleged violation of Life Book 2nd Edition, Core Safety Rules, Rule 7 in connection with his alleged actions of damaging a tamper when the tamper head dropped, striking a road crossing while traveling the machine on Tuesday, February 17, 2009 at Mile Post 328.5 is arbitrary, unwarranted, based upon unproven charges and in violation of the Agreement (System File A 09 05 07/IC-BMWED-2009-00010).
2. As a consequence of the violation outlined in Part 1 above, Mr. C. Thompson is entitled to the full remedy detailed in Rule 33(i) of the Agreement, effective July 1, 2007.”

FINDINGS:

By notice dated February 20, 2009, 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 a tamper head that the Claimant was operating became damaged. The investigation was conducted, as scheduled, on February 25, 2009. By notice dated March 12, 2009, the Claimant was informed that as a result of the investigation, he had been found guilty of violating Carrier Core Safety 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 warranted. 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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier safety rules, specifically Rule 7. The Claimant was aware that both workheads were defective, but he only logged the left side for repair in his maintenance log book. The Claimant admitted in his testimony that he did not log the right-hand lock. The Claimant had knowledge on February 17, 2009, that both the left- and right-hand workheads on the tamper were not operating properly and it was his responsibility to take the tamper out of service. The Claimant failed to do that.


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 issued a ten-day suspension with an additional ten days being held in abeyance. Given the seriousness of the wrongdoing on the part of the Claimant, this Board cannot find that the discipline issued by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

CARRIER MEMBER
DATED: MARCH 31, 2011

ORGANIZATION MEMBER
DATED: MARCH 31, 2011