

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE**

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 71

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

1. The Carrier's discipline (immediate termination from service) of Mr. L. Saulsberry issued by letter dated June 8, 2009 in connection with an alleged violation of USOR General Rule H and USOR General Rule C was unjust, capricious, based upon unproven charges and in violation of the Agreement (System File A 09 08 03/IC-BMWED-2009-00046).
2. As a consequence of the Carrier's violation outlined in Part 1 above, Mr. Saulsberry shall be: exonerated of all charges in accordance with Rule 33(h) and be reimbursed for all wage loss sustained as a result of the Carrier's action, returned to service immediately, compensated for all lost wages with his seniority unimpaired."

FINDINGS:

By notice dated May 4, 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 the Claimant sustained a personal injury. The investigation was conducted, as scheduled, on May 22, 2009. By notice dated June 8, 2009, the Claimant was informed that as a result of the investigation, he had been found guilty of violating USOR General Rules H and C, and that he was being dismissed from the Carrier's service. 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, because the discipline assessed was warranted, and because the requested remedy is excessive. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to prove that the Claimant lied about the injury, because the Carrier failed to meet the higher burden of proof that applies to charges of dishonesty and allegations of moral turpitude, and because the Claimant is entitled to a complete remedy.

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 General Rules C and H, which required the Claimant to be alert and attentive while performing his duties and required the Claimant to not be dishonest or make false reports or statements during Carrier investigations. The record is clear that the Claimant acted in violation of both of these rules.

This matter began when the Claimant was injured exiting a Carrier vehicle that he had just moved. There was a witness who stated that the Claimant did not make three points of contact when he got out of the vehicle. Testimony regarding his exiting of the vehicle makes it clear that the Claimant was not alert and attentive when he was performing his duties on April 28, 2009.

Moreover, the record reveals that the Claimant was not truthful during the

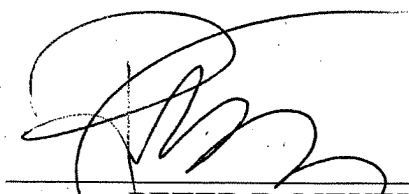
course of the investigation of this matter. The Carrier, in its submission, brought out numerous inconsistencies in the Claimant's testimony. Moreover, the re-enactment of the Claimant's alleged injury makes it clear that it could not have happened the way he testified.

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.

It is fundamental that the Claimant must be honest during the investigation of an injury. Moreover, the Claimant has an obligation of working in a safe manner. Considering the Claimant's short tenure with the Carrier, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment for these two very serious rule violations. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: MARCH 31, 2011



ORGANIZATION MEMBER

DATED: March 31, 2011