

BEFORE PUBLIC LAW BOARD NO. 6043

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

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 77

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

1. The dismissal of Claimant P. McLaughlin for the alleged violation of U.S. Operating Rules, General Rule G, Drugs and Alcohol, CN US Region LIFE Safety Rules and Recommended Practices, Section II, Core Safety Rules, Rights and Responsibilities #1i and CN US Region LIFE Safety Rules and Recommended Practices Section IV, Resources, Substance and Alcohol Free Environment (SAFE) Policy and Guidelines in connection with his alleged possession of illegal drugs and participating in the sale of those drugs in Ponchatoula, Louisiana on June 15, 2009 and CN US Region LIFE Safety Rules and Recommended Practices, Section II, Core Safety Rules, Substance Abuse #2 by failing to comply with the SAFE Policy and US Operating Rule 100, Rules, Regulations and Instructions and CN US Region LIFE Safety Rules and Recommended Practices, Section II, Core Safety Rules, Rights and Responsibilities #1h for violating the other rules stated herein is arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File A09-09-18/IC-BMWE-2009-00076).
2. As a consequence of the violation referenced in Part 1 above, Mr. P. McLaughlin is entitled to the full remedy detailed in Rule 33(i) of the Agreement.”

FINDINGS:

By letter dated July 3, 2009, the Claimant was directed to attend a formal hearing and investigation to determine whether he had violated any Carrier rules, instruction, or policies when he allegedly was found in possession of illegal drugs and/or controlled substances on June 15, 2009. The investigation was conducted, as scheduled, on July 8, 2009. By letter dated July 24, 2009, the Claimant was informed that as a result of the investigation, he had been found guilty of violating certain U.S. Operating Rules and

LIFE Safety Rules and Policies, and that he was being dismissed from the Carrier's service. The Organization filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence proves that the Claimant was guilty as charged, because the Claimant was afforded a fair and impartial hearing, because the discipline imposed was warranted, and because the Organization's requested remedy is excessive. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to issue a notice of hearing to the Claimant in accordance with Rule 33(a), because the Carrier failed to meet its burden of proof as to the charges leveled against the Claimant, and because the penalty of dismissal was unwarranted.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find that the Carrier did fail to live up to the requirements of Rule 33(a) and provide a Notice of Investigation within ten days after the Carrier became aware of the Claimant's arrest. The record reveals that the Claimant failed to report for work on June 16 and 17, 2009. The Claimant contacted his supervisor, Ray Neu, on June 16, 2009, and stated that he had been arrested and was incarcerated. The Claimant was later released from jail on June 17, 2009, and he went to Mr. Neu's office to explain the circumstances of his arrest and incarceration. The Carrier held the Claimant out of service pending investigation from June 17, 2009.

The record further reveals that the Carrier failed to issue a Notice of Hearing until July 3, 2009, which was eighteen days after the Carrier first became aware of the Claimant's arrest.

Rule 33(a) states, in part, the following:

Employees shall not be disciplined or dismissed until after a fair and impartial hearing. Notice of such hearing, stating the known circumstances involved, shall be given to the employee in writing within ten (10) days of the date that knowledge of the alleged offense has been received by the Engineering Superintendent or the employee's authorized representative.

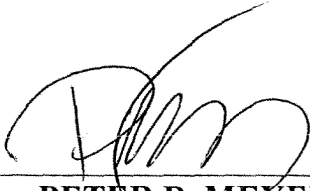
The Carrier received knowledge of the incident on June 16, 2009, and failed to take any action for eighteen days. That procedural violation on the part of the Carrier violated Rule 33(a).

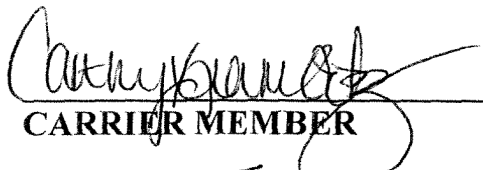
In addition, it should be pointed out that the Carrier failed to prove that the Claimant engaged in any illegal activity. Throughout the hearing, the Carrier was relying only on information regarding the arrest. There is no real evidence that the Claimant acted in violation of the Carrier's rules.

For all of the above reasons, the claim must be sustained.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member

CARRIER MEMBER

DATED: June 6, 2011



ORGANIZATION MEMBER

DATED: June 6, 2011