

BEFORE PUBLIC LAW BOARD NO. 7386

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
SOUTH KANSAS AND OKLAHOMA RAILROAD**

Case No. 13

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

1. The dismissal of Mr. M. Hill for alleged failure to properly inspect the Winfield Yard and the Oxford Lead in accordance with FRA standards and allegedly allowing train crews to operate into and on an area where known unsafe conditions existed between September 29, 2014 and October 1, 2014 was arbitrary, capricious, excessive and in violation of the Agreement (System File 2422-SK13N1-14138 SKO).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Hill shall be afforded the full remedy prescribed in Rule 17D of the Agreement."

FINDINGS:

By notice dated October 3, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant allegedly had failed to properly inspect the Winfield Yard and the Oxford Lead and allegedly had allowed train crews to operate into and on an out-of-service track between September 29 and October 1, 2014. The investigation was conducted, after a postponement, on October 14, 2014. By letter dated October 28, 2014, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, and that he was being dismissed from the Carrier's service. The Organization subsequently filed a claim on the Claimant's behalf, 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 credible evidence supports the finding that the Claimant violated the cited rules, because the Claimant was afforded all elements of due process, because the Claimant was afforded a fair and impartial investigation, and because the discipline imposed was not arbitrary, capricious, or an abuse of managerial discretion. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to afford the Claimant with a fair and impartial investigation, and because the Carrier's decision to dismiss the Claimant was arbitrary, capricious, excessive, and in violation of the Agreement.

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 them to be without merit. The record reveals that the Claimant was guaranteed all of his due process rights throughout the investigation and hearing.

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 properly inspect the switches when he did not report a number of broken bars. The record is clear that each one of those broken bars was in an out-of-service condition and immediate action should have been taken immediately by the Claimant.

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.

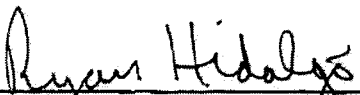
The Claimant in this case was dismissed from the Carrier's service for this incident. The record reveals that the Claimant has been employed by the Carrier for twenty-two years. There is no indication that he has ever received any major discipline during that long tenure with the Carrier. Consequently, we find that the Carrier acted unreasonably and arbitrarily when it terminated the Claimant's employment. We order that the Claimant be reinstated to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.

AWARD:


The claim is sustained in part and denied in part. The Claimant shall be reinstated to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
 Neutral Member



ORGANIZATION MEMBER
DATED: November 14, 2016



CARRIER MEMBER
DATED: November 14, 2016