

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
CN – WISCONSIN CENTRAL RAILROAD**

Case No. 51

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

1. The discipline [five (5) working day suspension deferred one (1) year] imposed upon Assistant Foreman C.R. Rueth for violation of General Rules H and I in connection with his failure to maintain his qualification, specifically his DOT Medical Certificate, is based on unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier’s File WC-BMWED-2009-00034).
2. As a consequence of the violation referred to in Part 1 above, Mr. Rueth shall be granted remedy in accordance with Rule 31(I) of the Agreement.”

FINDINGS:

By letter dated May 15, 2009, the Claimant was directed to attend a formal hearing and investigation to ascertain the facts and determine whether the Claimant had violated any Carrier rules, instructions, and/or policies in connection with his failure to maintain his qualification, specifically a DOT Medical Certificate, required for his position as assistant foreman. The investigation was conducted, after a postponement, on June 15, 2009. By letter dated June 29, 2009, the Claimant was notified that as a result of the hearing, he had been found guilty of violating USOR General Rules H and I, and that he was being suspended for five days, deferred for one year. The Organization thereafter filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to discipline the Claimant. 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 is culpable and that his actions were designed to avoid the assistant foreman position and to circumvent the Agreement, because the Claimant was afforded a fair and impartial investigation, because the discipline imposed was warranted, and because the Organization seeks an excessive remedy. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its burden of proving the charges, because the evidence introduced at the investigation does not support the charges or justify the discipline imposed, and because the discipline imposed was excessive, capricious, improper, and unwarranted.

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 failed to meet its burden of proof that the Claimant was guilty of Rules H or I because he let his medical card expire. Therefore, the claim must be sustained.

Carrier Rule H prohibits dishonesty, disloyalty, insubordination, and willful neglect. Although the Claimant failed to renew his medical card, this Board cannot find that the Claimant's action constituted willful neglect as set forth in Rule H.

General Rule I states that:


Employees must report for duty at the designated time
and place with the necessary equipment ready to perform
their duties.

This Board finds that the fact that the Claimant did not renew his medical card does not constitute a violation of General Rule I.

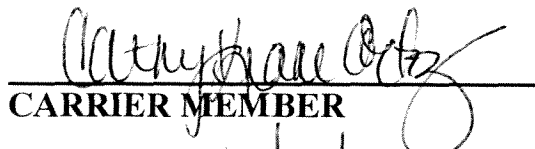
It is fundamental that the Carrier bears the burden of proof in all discipline cases.
The Carrier in this case failed to meet that burden and, therefore, this claim must be sustained.

AWARD:


The claim is sustained.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER
DATED: 10/31/12



ORGANIZATION MEMBER
DATED: October 31, 2012