

BEFORE PUBLIC LAW BOARD NO. 6915

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

Case No. 52

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

1. The Carrier’s discipline [five (5) working days actual suspension and five (5) working days deferred suspension for one (1) year] of Mr. G. Eis, issued by letter dated August 28, 2009, in connection with alleged violations of USOR General Rule A, Safety and Rule 100, Duties and Qualifications of employees, CN Safety Rule Book E-13, Lifting and Stretching was on the insufficient basis of the Carrier’s having failed to sustain its burden of proof (Carrier’s File WC-BMWED-2009-00054).
2. As a consequence of the Carrier’s violation referred outlined in Part 1 above, Mr. Eis is entitled to the complete remedy prescribed in Rule 31, Paragraph I of the Collective Bargaining Agreement.”

FINDINGS:

By letter dated August 3, 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 an on-duty injury that Claimant incurred on July 21, 2009. The investigation was conducted, as scheduled, on August 11, 2009. By letter dated August 28, 2009, the Claimant was notified that as a result of the hearing, he had been found guilty of violating Carrier Rules, and that he was being assessed a five-day actual suspension and five-day suspension 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 probative evidence proves that the Claimant is guilty as charged, 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 grossly violated Rule 31 when it failed to provide the Organization with an advance copy of the documents it planned to use at the hearing, because the Claimant's defense was compromised by the Organization's resulting inability to prepare for the hearing as it should have and the resulting tainting of the record and merits, and because the Carrier failed to meet its burden of proving that any charged rule violation occurred.

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

This Board has reviewed the procedural argument raised by the Organization, and we find that the Carrier did violate Rule 31 of the parties' collective bargaining agreement when it failed to provide the Organization, at least twenty-four hours prior to the hearing, all documents to be used in the hearing. In the record, there was correspondence dated October 7, 2009, from the Manager of Labor Relations, who states, in part:

All documentation that was entered into the record was provided to the Organization and the Claimant at the hearing and they were given opportunity to review same and, if necessary, were given opportunity to recess the investigation to accomplish that review.

The above sentence is a tacit admission that the Carrier did not comply with the requirements of Rule 31. The Carrier admitted that the required documents were not turned over twenty-four hours in advance of the hearing.

Moreover, the Claimant in this case received a Notice of Hearing which stated, in part, that he was to attend a formal investigation:

. . . for the purpose of ascertaining the facts and to determine whether or not you violated any Company rules, instructions or policies in connection with an incident which occurred on Tuesday, July 21, 2009, at approximately 1100 hours near Carney, Michigan, and in which it is alleged you sustained an on-duty injury.


That notice goes on to state that it is the Claimant's responsibility to arrange for witnesses who have knowledge of the incident.

The Carrier failed to comply with the clear rule that requires it to turn over documents that it intends to use at the hearing twenty-four hours in advance of the hearing. Certainly with the vagueness of the charges set forth in the Notice of Hearing, the Organization and the Claimant would have been unable to obtain the witnesses and evidence they needed to defend against the charges set forth in the Notice of Investigation.


Consequently, this Board has no alternative but to sustain the claim on the procedural argument raised by the Organization.

AWARD:

The claim is sustained.




PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 10/31/12



ORGANIZATION MEMBER

DATED: October 31, 2012