

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYES DIVISION)	
IBT RAIL CONFERENCE)	Docket No. 33
)	
and)	
)	
CANADIAN NATIONAL/WISCONSIN)	
CENTRAL LTD.)	Claimant: R. Givens

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

1. The discipline in the form of an eighteen (18) month suspension of rights to hold a position requiring the operation of CN machines and/or CN Company vehicles, beginning on December 29, 2011 and continuing through June 29, 2013, imposed upon employer. Givens for the alleged violation of USOR - General Rule A - Safety, USOR - General Rule B - Reporting and Complying with Instructions, USOR - General Rule M - Railroad Property, USOR General Rule P - Employee Conduct, USOR - Rule 100- Rules, Regulations and Instructions and LIFE U.S. Safety Rules - Core Safety Rules - Rights and Responsibilities, paragraph F & H, is on the basis of unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier's File WC-BMWED-2012-00001).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Givens shall receive the remedy prescribed in Rule 31I of the Agreement."

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant was issued a Notice of Investigation that provided in relevant part:

This investigation is being held to develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies in connection with an incident that occurred at approximately 1739 hours, November 03, 2011 at or near Fond du Lac, WI. It is alleged you were improperly operating CN Vehicle #170678 in an unsafe manner.

At the hearing, Special Agent Black testified he witnessed Claimant suddenly accelerating truck 170678 and "fish tailing" through the parking lot at a high rate of speed while kicking up gravel and dust around parked cars. Claimant came to a stop at the rear door of the roundhouse. Claimant agreed that he was driving the Carrier truck but denied the conduct.

Following the investigation, Claimant was assessed 18 month suspension of rights to hold a position requiring operation of Carrier machines or vehicles.

The Organization argues that there is not substantial evidence of Claimant's misconduct because the Carrier witness provided uncorroborated testimony. The other Special Agent in the area was not called to testify and the photographs depict nothing more than tire tracks in a muddy parking lot. Further, because it was muddy, there could not have been dust kicked up like the witness described. According to the Organization, this is two opposite versions of events and the Carrier's version is no more believable than Claimant's. Accordingly, the Carrier cannot establish the charged conduct.

The Carrier responds that there is substantial evidence in the record. Special Agent Black had no motive to fabricate and none has been shown in the record. He immediately approached the Claimant after the Carrier's truck came to a halt behind the Carrier's building. Further, he took photographs of the tracks that the "fishtailing" had left in the dirt and gravel of the parking lot.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

After a review of the record, the Board finds that there were no procedural violations which void the discipline. On the merits, this Board finds that there is substantial evidence in the record of the cited misconduct. It is undisputed that Claimant was driving the truck in the parking lot. Special Agent Black was nearby and the noise and erratic driving caught his attention. He testified that Claimant was fishtailing through the earthen and gravel parking lot and spraying the parked cars as he drove quickly to the door of the Carrier building. He then took photographs of the tracks left by the Carrier truck in the parking lot.

The testimony of the Special Agent was clear, convincing and corroborated by the photographs of the parking lot. It was not improper for the trier of fact to find Special Agent Black to be a credible witness.

The inquiry turns to the imposed discipline and the Organization's claim that the discipline was excessive based upon Claimant's history and the Carrier's response that it was appropriate based upon the nature of the offense.

Claimant was driving a Carrier vehicle dangerously in a Carrier lot and spraying dirt and gravel onto parked cars in that lot.

There is nothing in the record that shows the Carrier to be acting unreasonably, arbitrarily or capriciously in issuing the discipline that barred Claimant from operating Carrier machinery or

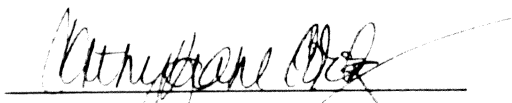
vehicles for 18 months. The imposed discipline did not constitute an abuse of the Carrier's discretion.

Award:

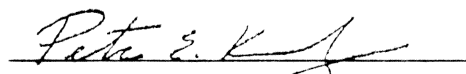
Claim denied.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Peter Kennedy, Organization Member

Signed on June 10, 2013