

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYES DIVISION )  
IBT RAIL CONFERENCE )  
and )  
CANADIAN NATIONAL/WISCONSIN )  
CENTRAL LTD. )

Docket No. 34

Claimant: R. Givens

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

1. The discipline in the form of a twenty (20) day actual suspension from service beginning on December 29, 2011 and continuing through January 25, 2012, and a thirty (30) day overhead deferred suspension from December 28, 2011 through December 28, 2012, imposed upon employer. Givens for the alleged violation of USOR - General Rule B - Reporting and Complying with Instructions, USOR - General Rule I - Duty Reporting or Absence, USOR- Rule 100- Rules, Regulations and Instructions and LIFE U. S. Safety Rules - Core Safety Rules - Rights and Responsibilities, paragraph E & H, is on the basis of unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier's File WC-BMWED-2012-00002).
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 your alleged failure to report for duty Friday, November 4, 2011 and Monday, November 7, 2011.

As a result of the investigation, Claimant was assessed a twenty (20) day actual suspension and thirty (30) days deferred suspension.

The Organization argues that the Claimant reported to Foreman Krall that he would not be at work due to illness at 0400 on November 11, 2011. He knew that it was 0400 because he rode with Mr. Krall from Marshfield Wisconsin and left at 0430. Claimant did not call in for the November 7 absence as he was retrieving his automobile from the mechanic.

The Carrier asserts that the Claimant violated the applicable Rules because he did not notify his supervisor of his absences. He should have notified Supervisor Rusch and not his Foreman.

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.


There is no substantial evidence in the record that Claimant violated the cited Rules on November 4, 2011. The Carrier did not contest that Claimant spoke with his Foreman at 0400. Further, Supervisor Rusch also did not contest Claimant's testimony that he had previously reported absences to Foreman Jeff Stewart and Foreman Mike Jensen and that notifying a Foreman was acceptable. Claimant's testimony that he has previously notified Foremen of absences is not contradicted by Supervisor Rusch.

There is substantial evidence that Claimant violated the reporting requirements on November 7. His own testimony establishes that he told his Foreman four days prior that he would be absent on November 7. Even with the practice of notifying a Foreman of an absence, as detailed above, Claimant did not inform of his absence on November 7.

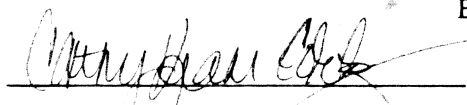
Accordingly, this Board finds that Claimant did not violate the applicable Rules on November 4, 2011, but did violate the applicable Rules on November 7, 2011.

**Award:**

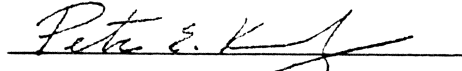
Claim sustained in part and denied in part as discussed above. Claimant's suspension reduced to a ten (10) day actual suspension.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Peter Kennedy, Organization Member

Signed on June 10, 2013