

PUBLIC LAW BOARD 5564

In the Matter of Arbitration between:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION – IBT RAIL CONFERENCE**

and

**NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD
CORPORATION**

Case No. 77

Award No. 77

THE ORGANIZATION'S STATEMENT OF THE CLAIM

This Decision resolves the Organization's claim as follows:

1. The Carrier's discipline (dismissal) of Mr. J. Jefferson, by letter dated October 6, 2017, for alleged violation of Metra Employee Conduct Rules 'B' and 'N', Item #3 Insubordinate in connection with his alleged failure to follow instructions given to him by Mr. Joel Winchester's letter dated August 30, 2017, when on September 8, 2017 he refused to remove his brace as necessary to allow Dr. Vlahos to examine his foot and evaluate his medical condition was arbitrary, unwarranted and in violation of the Agreement (System File METRA-2018-D070-1/8-2017-12 NRC).

2. As a consequence of the violation referred to in Part 1 above:

. . . the Claimant shall be reinstated to service with all seniority rights restored and all entitlement to, and credit for, benefits restored, including vacation and health insurance benefits. The Claimant shall be made whole for all financial losses as a result of the violation, including compensation for:

- 1) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of removal from service

(this amount is not reduced by earnings from alternate employment obtained by the claimant while wrongfully removed from service);

- 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service;
- 3) overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the Claimant not been removed from (sic) service;
- 4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service. All notations of this dismissal should be removed from all carrier records, due to the Carrier's arbitrary, capricious, and excessive discipline leading to the Claimant being improperly dismissed. (Employees' Exhibit 'A-2').

STATEMENT OF THE CASE

Based on the record developed by the Organization and the Carrier, this Public Law Board (Board) finds the Parties herein to be a Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the Parties and the dispute.

This dispute is between the Brotherhood of Maintenance of Way Employees Division – IBT Rail Conference (BMWE or Organization) and the Northeast Illinois Regional Commuter Railroad Corporation (Metra or Carrier) (collectively the Parties). The dispute arises out of Metra's dismissal of Jetsun Jefferson (Jefferson or Claimant), a Metra maintenance of a way employee for approximately 24 years.

The relevant and material facts are as follows:

On August 22, 2016, Claimant was placed on a medical leave of absence due to an on-duty injury. He remained on medical leave throughout the events giving rise to his Step

5 discipline, dismissal.

On August 24, 2017, Joel Winchester, Metra Director of Engineering, instructed Claimant to participate in a medical examination. In an August 30, 2017 letter to Claimant, Winchester instructed Jefferson to attend a September 8, 2017 10:00 a.m. medical evaluation with Dr. Maria Vlahos, US HealthWorks.

Winchester's letter specifically stated that Claimant:

1. must bring the latest clinical office notes and treatment plans from his treating physician to this appointment;
2. was required to completely fill out any paperwork requested;
3. must provide all required information necessary for his medical examination and answer all questions asked;
4. was required to allow Dr. Vlahos and her staff to evaluate your medical condition.

Winchester also reminded Claimant that he was required to adhere to the Metra Code of Conduct Policies during his appointment.

Winchester's specific, written instructions were the result of Claimant's history of thwarting Carrier medical examinations. (See: Award 78, PLB 5564).

On September 8, 2017, Winchester and Dan Colantuono, Building and Bridges (B&B) Supervisor, arrived at US HealthWorks before Claimant's 10:00 a.m. appointment. Claimant and his brother LaShawn Jefferson arrived late at 10:55 a.m. Between 10:55 a.m. and 11:05 a.m., Claimant filled out paperwork. Then Claimant with his brother went to an examination room.

For a complete examination, Dr. Vlahos requested Claimant take off his shoe and ankle brace. Claimant steadfastly refused even after Dr. Vlahos' several requests. Dr. Vlahos was unable to complete Claimant's medical examination. She could not reach a medical conclusion regarding Claimant's condition because Jefferson refused to comply

with her requests.

On September 26, 2017, a formal investigation with a transcript was held to determine the facts regarding Claimant's failure to follow Winchester's August 30, 2017 written instructions and Claimant's failure to remove his shoe and ankle brace when requested by Dr. Vlahos to examine him and to evaluate his medical condition.

On October 6, 2017, as a result of the formal investigation evidence and testimony, the Carrier issued a Notice of Discipline dismissing Claimant for Step 5 discipline, dismissal, for violating Metra Employee Conduct Rules B and N, Item 3, Insubordination.

On October 27, 2017, BMW E appealed Claimant's discipline.

On December 20, 2017, Metra denied the appeal.

The Parties conferenced the dispute but did not resolve it. The Claim is now properly before this Board for resolution.

APPLICABLE WORK RULES

Rule B of the Employee Conduct Rules: Employee must have a proper understanding and working knowledge of and obey all rules and instructions in whatever form issued, applicable to, or affecting their duties. If in doubt as to their meaning, employees must contact their supervisor for explanation.

Rules may be canceled, superseded, or changed by General Orders, Special Instructions, Bulletins, and departmental policies and procedures. Employees are required to be familiar with and comply with all rules, as amended.

* * *

Rule N of the Employee Conduct Rules: Employees must not be: 3. Insubordinate.

PARTIES' CONTENTIONS

I. Metra's Contentions

Metra asserts that the record of the formal investigation proves that Claimant violated the Carrier's work rules when he failed to follow Winchester's direct orders. With regard to Dr. Vlahos requests, Metra argues that the formal investigation showed Claimant refused to remove his shoe and ankle brace for Dr. Vlahos' examination.

Metra also asserts that Winchester's orders were without ambiguity. Metra argues that Claimant provided no convincing explanation or rationale for his insubordination during the medical examination, although he provided many excuses during his formal investigation testimony.

Metra cites long standing, well-established precedent supporting a Carrier's right to require employees to take medical examination to evaluate their ability to perform work or support disability claims. Metra argues that Claimant was insubordinate not only as to Winchester's written instructions, but also as to Dr. Vlahos repeated instruction to remove his shoe and ankle brace.

Metra asserts that Claimant was provided a fair and impartial formal investigation of his misconduct. Metra argues that there were no procedural errors in the formal investigation and that the Hearing Officer was fair and impartial. Metra says that BMW has not produced any credible evidence to the contrary.

Metra concludes asserting that the formal investigation established Claimant refused to follow direct orders from Winchester and Dr. Vlahos. Claimant's insubordination, Metra maintains, justifies Claimant's Step 5 discipline, dismissal.

The Carrier requests that the Claim be denied.

II. BMW's Contentions

BMW asserts that the Carrier failed to comply with Rule 32 requiring that Claimant received a fair and impartial hearing before discipline is imposed. BMW argues that the Hearing Officer did not treat Claimant fairly or impartially.

BMW asserts that the Carrier did not meet the burden of proof in connection with all the charges.

BMW argues that the discipline imposed was arbitrary and unwarranted because Claimant is a veteran employee with 24-years of service and a safe and productive employee.

BMW requests that the Claim be allowed and the Claimant made whole.

DISCUSSION AND FINDINGS

Metra has the burden to prove that Claimant's dismissal and Step 5 discipline was proper under the Parties' Agreement and Metra's work rules and policies. The Board's review of Claimant's suspension is appellate and not *de novo*.

For the reason discussed below, the Board is persuaded that Metra has met its burden of proof to establish that Claimant was insubordinate and violated Carrier work rules B and N, 3 and his dismissal at Step 5 discipline is appropriate. Nothing in the record indicates any other conclusion.

Insubordination is the failure of an employee to follow lawful orders from competent authority. Insubordination can also occur when an employee manifests open, willful disrespect for supervision.

In this dispute, all of Winchester's written orders were valid orders from competent authority. Specific to his dismissal, Claimant was given valid written order from his supervisor, Winchester, which he willfully violated by refusing to cooperate with regard to Dr. Vlahos examination.

Moreover, Dr. Vlahos instruction to Jefferson to remove his shoe and ankle brace amounted to yet another valid order from competent authority, supported by Winchester's written instructions, which Claimant met with insubordination.

There is no evidence in the record for the Board to overturn the on-property finding on the merits of Jefferson's dismissal. The Board finds that the record establishes that the Carrier proved that Claimant violated Rules B and N, 3.

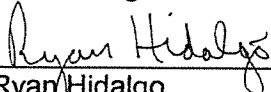
Claimant's recent similar misconduct placed him at Step 4 discipline. Pursuant to the Carrier's Progressive Discipline Policy, Jefferson's proven insubordination in this Claim places him at Step 5, dismissal.

For these reasons the Board finds that the Carrier has proven discipline of the Claimant was justified and a Step 5, dismissal was an appropriate penalty for his misconduct. The Claim is denied.

AWARD

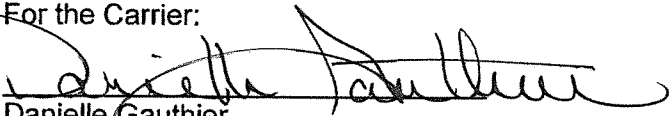
Claim denied.

For the Organization:



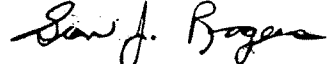
Ryan Hidalgo
Public Law Board Advocate
BMWE-IBT

For the Carrier:



Danielle Gauthier
Director Labor Relations
Metra

Neutral Member:



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October 31, 2019