

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. 78

Award No. 78

THE ORGANIZATION’S STATEMENT OF THE CLAIM

This Decision resolves the Organization’s claim as follows:

1. The Carrier’s discipline (suspension) of Mr. J. Jefferson, by letter date October 5, 2017, for alleged violation of Metra Employee Conduct Rule”B” and “N”, Items #6 and #7 in connection with his alleged failure to follow Joel Winchester’s instructions to participate and complete a medical examination on August 15, 2017; allegedly being discourteous and quarrelsome with the Center Operation Director of Metra’s medical staff; alleged refusal to sign a medical history form; and alleged willful failure to follow instructions from Carla Lowe to take part and complete the medical exam was arbitrary, unwarranted and in violation of the Agreement (System File METRA-2018-D040-2/8-2017-13 NRC).

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

*** the suspension shall be set aside and the Claimant shall be made whole for all financial and benefit losses as a result of the violation. Any benefits lost, including vacation and health insurance benefits (including coverage under the railroad industry National Plan), shall be restored. Restitution for financial losses as a result of the violation shall include compensation for:

1. Straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to claimant at time of suspension from service (this amount is not reduced by

any outside earnings obtained by the Claimant while wrongfully suspended).

2. Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the Claimant was suspended.
3. Overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time claimant was suspended from service, or any overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended from service.
4. Health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly suspended.
5. All notations of the suspension should be removed from all carrier records.

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 5 work day suspension of Jetsun Jefferson (Jefferson or Claimant), Metra maintenance of 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 5 work day suspension and Step 4 discipline.

Almost a year later, on August 8, 2017, Joel Winchester, Metra Director of Engineering, instructed Claimant to attend a medical appointment for a complete examination on August 14, 2017 at US HealthWorks, a Metra medical provider. Because of his previous rude and confrontational behavior at US HealthWorks on July 27, 2017, Winchester warned Claimant that his previous bad behavior was not in keeping with Metra's Code of Conduct policy.

On August 10, 2017, Claimant contacted Winchester stating he was unable to make the August 14, 2017 appointment. Between August 11 and 14, 2017, Winchester and Claimant attempted to reschedule the appointment. Claimant's appointment was rescheduled to August 15, 2017 at the Concentra medical facility, another Metra medical provider.

On August 14, 2017, Don Orseno, Metra Chief Executive Officer, and Winchester explained to Claimant that he needed to fill out all necessary paperwork and to participate in the medical examination. Claimant said he would.

At the August 15, 2017 appointment, Carla Lowe, Concentra Center of Operations Director, requested that the Claimant fill out a medical history to see a new doctor. Claimant said that he already filled out a medical history with his own doctor and that US HealthWorks had a medical history. He refused to complete the medical history. After several more refusals, Lowe asked Claimant the medical history questions in an exam room. She wrote down his responses and completed the form. He answered each question. Lowe completed Claimant's medical history form. Then, Claimant refused to sign the form for accuracy.

Next, a medical assistant took Claimant's vitals. After an examination by Dr. Kang and a physical therapist, Lowe asked Claimant to walk to the physical therapy gym to perform lifts. Claimant responded, "No." Claimant stated he believed that the appointment was only to see a doctor. Lowe told Claimant that Dr. Kang needed information on his ability to lift. Claimant refused and said he would not leave the exam room.

As a result of his uncooperative behavior, no medical conclusion was reached by Dr. Kang.

On September 26, 2017, a formal investigation with a transcript was held to determine the facts regarding: Claimant's failure to follow Winchester's instructions to participate in and to complete forms for the August 15, 2017 medical examination; his discourteousness to and quarrelsomeness with Metra's Concentra medical staff on August 15, 2017 regarding his medical history; his refusal to sign his medical history; and his refusal to follow Lowe's instructions to complete his medical examination.

On October 5, 2017, as a result of the formal investigation evidence and testimony, the Carrier issued a Notice of Discipline, suspending Claimant for 5 work days, and assessed Step 4 discipline, for violating Metra Employee Conduct Rules B and N, Item 6 and 7. Pursuant to the Carrier's Progressive Discipline Policy, Step 4 discipline is one step below dismissal at Step 5, Dismissal.

However, the suspension was held in abeyance until Claimant was released from his medical leave of absence and returned for service.

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

On December 21, 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: 6. Quarrelsome; or 7. Discourteous.

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 instructions during Claimant's medical evaluation to complete all forms as requested. Metra argues that the formal investigation showed Claimant was discourteous and quarrelsome at his medical appointment despite written and oral instructions.

Metra also asserts that Claimant failed to follow the instruction of Lowe and Dr. Kang during their efforts to conduct his medical examination for the Carrier. Metra argues that Claimant provided no explanation or rationale for his misbehavior during the attempts to conduct the medical examination, although he provided many excuses during the formal investigation.

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 the formal investigation established Claimant: refused to fill out a medical history form; refused to sign the form; refused to go to physical therapy lift testing; and failed to comply with instructions to participate in his medical examination. Claimant's bad behavior, Metra maintains, justifies Claimant's discipline of 5 work day suspension and Step 4 discipline.

The Carrier requests that the Claim be denied.

II. BMWWE's Contentions

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

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

BMWWE argues that the discipline imposed was arbitrary and unwarranted, not progressive and punitive in nature.

BMWWE requests that the Claim be allowed and the Claimant made whole as described in the Statement of the Claim above.

DISCUSSION AND FINDINGS

Metra has the burden to prove that Claimant's 5 work day suspension and Step 4 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 violated Carrier work rules and that a 5 work day suspension and Step 4 discipline was the appropriate penalty.

The totality of the relevant and material facts and circumstances established by Metra's formal investigation show that Claimant failed and refused to follow Winchester's instructions to complete medical forms during Claimant's Concentra examination and not to be rude and confrontational with the medical staff.

The formal investigation also established that but for the efforts of Lowe and Dr. Kang, Claimant's medical history forms would not have been completed and no medical evaluation would have occurred. Despite Lowe's efforts to complete Claimant's medical history, he refused to sign the form for accuracy.

Furthermore, despite his *post hoc* testimonial excuses during the formal investigation, the record and witness testimony proves that Claimant thwarted nearly every effort by the Concentra staff to complete his examination.

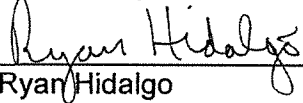
The totality of the record shows that his conduct was insubordinate, quarrelsome and discourteous in violation of Carrier Rules B and N.

For these reasons the Board finds that the Carrier has proven discipline of the Claimant was justified and a 5 work day suspension and Step 4 discipline an appropriate penalty for his misconduct. The Claim is denied.

AWARD


Claim denied.

For the Organization:



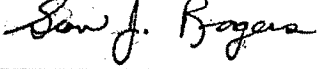
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Public Law Board Advocate
BMWE-IBT

For the Carrier:



Danielle Gauthier
Director - Labor Relations
Metra

Neutral Member:



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October 31, 2019