

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 220

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

1. The discipline (suspension) imposed upon Mr. I. Sanchez for violation of Carrier rules in connection with allegations Mr. Sanchez was absent without authority on July 1, 2014, August 25, 2014 and September 10, 2014 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C 14 10 01/IC-BMWED-2014-00221 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant I. Sanchez shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”

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 6043 has jurisdiction over the parties and the dispute involved herein.

The Claimant established and holds seniority within the Carrier’s Maintenance of Way Department. At the time of the events giving rise to this dispute, Claimant was working under the supervision of Production Supervisor D. Shapley. On September 17, 2014, the Claimant was given notice of an investigation in connection with the following charge:

... develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies in connection with incidents that allegedly occurred on Tuesday, July 1, 2014 at approximately 0500 hours at approximately Leighton Sub MP 48.5 at or near Barrington, Illinois, on Monday, August 25, 2014 at approximately 0800 hours at approximately Waukesha Sub MP 37.5 at or near Lake Forest, Illinois, and on Wednesday, September 10, 2014 at approximately 0800 hours at approximately Matteson Sub MP 45.6 at or near Gary, Indiana to determine whether or not you violated the AMC guidelines when you were allegedly absent without authority.

After a formal investigation on September 23, 2014, Claimant was found in violation of USOR - General Rule I - Duty Reporting or Absence and CN-United States Attendance Guidelines for Unionized Employees of May 24, 2013 and assessed a five-day actual suspension without pay.

Claimant admitted being absent from work on July 1, August 25, and September 10, 2014. On July 1, 2014, Claimant was unable to report to work because his fiancé required medical attention and Claimant accompanied her to the hospital. Claimant testified that he did not request to use a vacation day because his supervisor previously made known his policy that a vacation day would only be allowed with 24 hours' notice. On August 25 and September 10, 2014, Claimant was unable to report to work due to water damage to his home caused by recent storms. Claimant did not request to use vacation days on those days, either, due to his supervisor's stated policy. On each of the three absences, Claimant called off as "unable to work" via the Attendance Management Center ("AMC").

After the third absence, a review was conducted to determine whether Claimant's absences were in violation of the AMC Guidelines' requirements which provide, in part:

ATTENDANCE GUIDELINES

An unexcused absence is defined as any absence other than (1) approved absence(s) for family or medical leave pursuant to the FMLA or similar state leave laws, (2) approved medical leaves of absence and (3) any other absence or leave as long as proper approval has been granted. An employee will be subject to Corrective Action (which may include discipline) if unexcused absences reach any of the following levels during any 12-week period:

- More than 2 occurrences of any duration
- More than 3 total work days missed
- More than 1 occurrence that is on a holiday or immediately before or after a holiday, rest day, Personal Leave Day (PLO), vacation day, or Family Medical Leave Act (FMLA) day.

The July 1 absence occurred prior to a vacation day and the August 25 absence followed Claimant's rest days. After the August 25, 2014 occurrence, he was given a letter of instruction stating, in part, "Failure to comply with the requirements of the Attendance Guidelines may result in disciplinary action, which may include a company investigation...." After the September 10 absence, Notice of Investigation and this discipline were issued.

The Carrier contends that the discipline was appropriate because it presented substantial evidence that Claimant violated the Attendance Guidelines when he had three unexcused absences within a twelve-week period, on July 1, August 25, and September 10, 2014. The Carrier contends that Claimant has admitted his absences from work on those days, which exceeded the threshold of the Guidelines.

The Carrier contends that it has the authority to take into account all absences that occurred within the time frame, regardless of the reasons for the absences. The Carrier contends that none of Claimant's absences were excused because none occurred during an approved FMLA leave, medical leave, or any other approved leave.

The Carrier contends that the discipline was timely because the historical practice on the property has always been to use a time frame “outside” the trigger date to evaluate attendance without prior complaint from the Organization. Without an extended period to evaluate, the Carrier would not be able to identify absenteeism issues. The Carrier contends that the Organization has failed to show disproportionate discipline.

The Organization contends that the discipline was unfair because the absences cannot be considered unexcused. The Organization contends that Claimant was absent due to circumstances beyond his control. The Organization contends that Claimant followed the instructions of the Carrier’s Attendance Guidelines and properly notified his supervisor of each absence.

The Organization contends that the Carrier may not wait weeks after an absence to notify the employee that the absence is not approved. The Organization contends that Claimant was given a letter of instruction and then disciplined for the same absences. The Organization contends that Claimant provided unrefuted testimony that he had never received a copy of the CN United States Attendance Guidelines for Unionized Employees dated May 24, 2013. In its appeal, the Organization contended that Claimant was subjected to disproportionate discipline, because managers have excused other employees’ three-day absences.

Claimant was disciplined when he called off work for the third time in twelve weeks, in contravention of the Carrier’s Attendance Guidelines. There is no dispute that he called off three times in twelve weeks and that each one of the absences was treated as unexcused by the Carrier. Further, one absence occurred before a vacation day and one followed rest days. None of the absences was covered by FMLA and none occurred during a leave approved by the Carrier.


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.

The record shows that Claimant was given a copy of the Carrier’s Attendance Guidelines at his coaching. His denial of same creates a dispute in fact, which this Board cannot resolve. Claimant has admitted his absences. Pursuant to the Carrier’s Guidelines, the reasons given would render them unexcused, even if the circumstances were beyond Claimant’s control. No reason why the Carrier should have treated those absences as excused was presented. Even if a single absence is acceptable on its own, the Carrier may properly consider the cumulative effect of an employee’s absences when determining whether to impose discipline. Claimant’s entire disciplinary record may be considered when issuing corrective action.

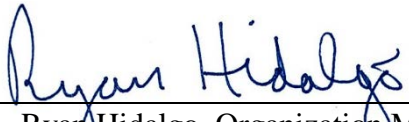
Claimant was formally coached the first time he reached a threshold on the Attendance Guidelines. Assessing a five-day suspension after he reached the next threshold was neither arbitrary nor excessive. With respect to the Organization’s claim that Claimant was subjected to disproportionate discipline, the record is insufficient to make a determination that Claimant was treated more harshly than other employees who engaged in similar conduct.

AWARD

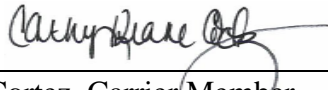
The claim is denied.



Kathryn A. VanDagens, Neutral Member



Ryan Hidalgo, Organization Member



Cathy Cortez, Carrier Member

Dated: May 1, 2019

Dated: _____