

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 224

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

1. The discipline (suspension) imposed upon Mr. C. Dupree for violation of Carrier rules in connection with alleged unexcused absences on September 23, 24 and December 2, 2013 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C 14 01 07/IC-BMWED-2014-00016 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Dupree shall have his record cleared of the charges leveled against them and 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.

Claimant established and holds seniority within the Carrier’s Maintenance of Way Department. On December 11, 2013, Claimant was given notice of an investigation in connection with the following charge:

...to develop the facts and to determine your responsibility, if any, and whether or not you violated any CN rules, regulations and/or policies in connection with your violation of the AMC Attendance Guidelines. The record contains credible testimony and substantial evidence proving that you violated the AMC Attendance Guidelines for your unexcused absences on September 23rd, 24th and December 2, 2013.

After a formal investigation on December 19, 2013, Claimant was found in violation of AMC Attendance Guidelines and was assessed a five-day actual unpaid suspension and an additional 10-day deferred unpaid suspension.

Claimant was unable to report to work on September 23 and 24, and December 2, 2013, due to illness. In each case, Claimant called into the Carrier’s Attendance Management Center

(AMC) to report his absence including the reason. Claimant testified that he was absent because he was sick and provided documentation that he had been to a doctor for a medical evaluation.

After the third absence, a review was conducted to determine whether Claimant was in violation of the Carrier's Attendance Guidelines, 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 Carrier contends that Claimant's absence on December 2, 2013 was his third unexcused absence and his second occurrence following a rest day within the twelve-week review period, so he was properly found to be in violation of the Attendance Guidelines. The Carrier contends that Claimant's absences are not excused merely because he was required to and did produce a doctor's note for the absences.

The Carrier contends that Claimant was provided progressive discipline, because he was issued a letter of instruction after violating the guidelines on October 17, 2013. The Carrier contends that Claimant was assessed a 5-day actual and 10-day deferred suspension because he violated the AMC Guidelines twice in less than twelve weeks.

The Organization contends that the Carrier cannot validly contend that Claimant's absences from work were unexcused absences. The Organization contends that Claimant followed all instructions of the Carrier's Attendance Policy and properly notified his supervisor and the Carrier's AMC that he would be absent from work. The Organization contends that the Carrier took no exception to the absences when they occurred, so it cannot do so after the fact.

The Organization contends that the discipline imposed was arbitrary, unwarranted and disparate, and as such, must be overturned. The Organization contends that the Carrier has allowed other employees to mark off yet refused to allow Claimant to do so, although he had a justifiable excuse.

Claimant was disciplined after having called off three times. There is no dispute that he called off three times in a twelve-week period or that two of those absences followed rest days. None of these absences was covered by the FMLA and none was during a leave approved by the Carrier. Each of these absences was treated as unexcused under the Carrier's Guidelines.


The Board sits as an appellate forum in discipline cases. It does not weigh the evidence de novo. 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.

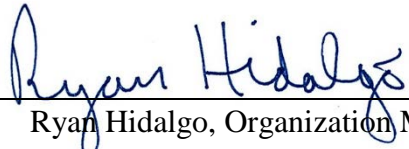
Claimant has admitted his absences. Pursuant to the Carrier's Attendance Guidelines, although Claimant has presented evidence that he was ill and was seen by a doctor, the reasons given would render these absences unexcused under the Carrier's Guidelines. No reason why the Carrier should have treated them 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.


Assessing a five-day actual suspension and a ten-day deferred suspension after he was given a Letter of Instruction was neither arbitrary nor excessive, based on Claimant's prior disciplinary record. With respect to the Organization's claim that Claimant was subjected to disproportionate discipline, the record demonstrates that the facts regarding the comparator offered are distinguishable from the facts here. In that case, the employee received approval to be absent from work prior to his call-off and there is no evidence in this record that Claimant here sought prior approval to be absent from work.

AWARD

The claim is denied.


Kathryn A. VanDagens, Neutral Member


Ryan Hidalgo, Organization Member


Cathy Cortez, Carrier Member

Dated: May 1, 2019

Dated: _____