

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 225

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

1. The discipline (suspension) imposed upon Mr. M. Jones for violation of Carrier rules in connection with alleged unexcused absences on various dates was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C 14 02 24/IC-BMWED-2014-00038 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Jones 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 February 3, 2014, Claimant was given notice of an investigation in connection with the following charge:

The 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 information indicating that your absence on Monday, November 11, 2013, Tuesday, December 17, Wednesday, December 18, Thursday, December 19, Friday, December 20, 2013, Tuesday, January 28, and Wednesday, January 29, 2014 when considered with other absences during the period of November 11, 2013 through January 29, 2014 may be in violation of requirements of the Attendance Guidelines.

After a formal investigation on February 6, 2014, Claimant was found in violation of USOR General Rule I -Duty Reporting or Absence and was assessed a five-day actual suspension.

On November 10, 2013, Claimant was involved in a car wreck and was unable to report to work the following day. On December 17, 18, 19, and 20, 2013 and January 28 and 29, 2014,

Claimant was unable to report to work due to medical issues. On each day, Claimant called in to the Carrier's Attendance Management Center (AMC), and reported that he would be absent and stated the reasons why.

Claimant filed FMLA paperwork with the Carrier to cover these absences. His initial request for leave under FMLA for absences on December 17, 18, 19, and 20 was denied. Claimant admitted during the on-property investigation that he failed to return the paperwork to the Carrier's Medical Department in a timely manner. A subsequent request for FMLA leave was approved, but nothing in the record suggests that the dates at issue here were approved absences under the FMLA. In addition, these dates were not approved for leave by the Carrier for any other reasons.

After Claimant's third unexcused absence in a twelve-week period, a review was conducted to determine whether Claimant was in violation of the Carrier's Attendance Guidelines, which read, 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 it has provided substantial evidence to support its finding that Claimant was guilty of violating the Attendance Guidelines. The Carrier contends that there is no dispute that Claimant had seven unexcused absences and that the January 29th absence was his third occurrence within a 12-week period. As a result, the Carrier contends that it has shown Claimant was 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 afforded progressive discipline, because he was issued a Letter of Instruction for violating the Attendance Guidelines on November 11, 2013, and was given a copy of the Attendance Guidelines. Less than eight weeks later, Claimant was found guilty of a second attendance violation. Pursuant to the Guidelines, he was properly assessed a five-day actual suspension.

The Organization contends that the Carrier cannot validly contend that Claimant's absence from work on the dates involved were unexcused absences. 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 on the dates involved.

The Organization contends that Claimant was absent due to a car accident and was applying for leave under the FMLA. The Organization contends that it is improper to discipline an employee for justifiable absences. Further, the Organization contends that the Carrier took no exception to the absences when they occurred, so it cannot do so now.

The Organization contends that the discipline imposed was arbitrary, unwarranted, and disparate, and 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 seven unexcused absences, three of which occurred in a twelve-week period. Although there is reference to Claimant's application for FMLA leave, there is no evidence that these absences were covered by FMLA. None of the absences were approved by the Carrier.


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.

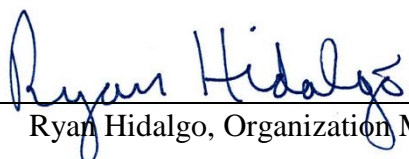
Claimant has admitted his absences. The Carrier's Attendance Guidelines allow certain types of absences to be excused, but none of Claimant's absences met those criteria. Even if a single absence is acceptable on its own, the Carrier may properly consider the cumulative effect of an employee's absences 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 actual suspension after Claimant was given a Letter of Instruction 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: _____