

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE OF	)	Case No. 101
WAY EMPLOYES -- IBT RAIL CONFERENCE	)	Award No. 101
	)	
and	)	
	)	
CANADIAN NATIONAL/WISCONSIN	)	
CENTRAL LTD.	)	
	)	Claimant: C. Goetz

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

1. The Carrier's discipline [five (5) day suspension] of Mr. C. Goetz for alleged violation of the Carriers' Absentee Policy was without just and sufficient cause (Carrier's File WC-BMWED-2015-00011 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Goetz shall receive the remedy prescribed in Rule 31I of the Agreement."

**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 7566 has jurisdiction over the parties and the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

Following an investigation hearing on July 2, 2015, Claimant was notified in a letter dated July 20, 2015:

The record contains credible testimony and substantial evidence proving that you violated the Attendance Guidelines.

In consideration of the incident, the proven rule violations, and your past discipline record, you are hereby assessed the following discipline:

5 Days Actual Suspension from Service

(July 20, 2015 through July 25, 2015)

The Carrier maintains that the discipline of serving a five-day suspension for violating the Attendance Guidelines was appropriate. Claimant was absent on three (3) occasions within a 12-week period. The volume of absences within the three (3) weeks was the trigger. Investigation revealed that his absences were unexcused.

The Organization responds that the Carrier violated the Agreement when it disciplined Claimant more than twenty (20) days after the incident. Claimant should not have been disciplined in July for an April absence. Claimant's June 15 absence was the only one for which the Carrier could even consider discipline – and he should not be disciplined. The Organization continues that the policy is not rationally enforced and denies employees from

taking time off for illness or personal emergency. The Organization states that Claimant was sick in April, his vehicle was broken in May, and his child was ill in June.

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. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

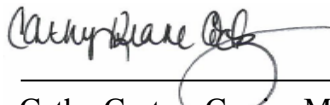
A review of the record indicates that there were no procedural violations which void the discipline. Claimant's three (3) absences within a twelve-week period are what triggered the investigation. The Carrier points out that there is no prohibition from taking vacation and personal leave days. An employee is investigated only if absence volume or timing are suspect. Here, the absences were above the thresholds established in the Carrier's Attendance Management Guidelines. On the merits, the Board finds that there is substantial evidence in the record to support the findings. Vacation and Personal Leave are part of the Agreement. Claimant did not fall within the criteria for excused absences on the cited days in April, May and June. It was not an abuse of discretion for the Carrier to find Claimant in violation of the Attendance Management Guidelines. A review of the evidence indicates that the Carrier did not abuse its discretion when it imposed a five-day suspension.

**Award:**

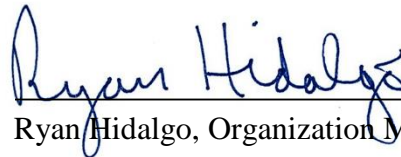
Claim denied.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on July 24, 2018