

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 106

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

and

CANADIAN NATIONAL RAILWAY, WISCONSIN CENTRAL

Carrier's File WC-BMWED-2016-00026

Claimant: D. SCHOCK

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STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

1. The discipline (suspension) imposed upon Mr. D. Schock for alleged violation of the Attendance Guidelines dated May 24, 2013 in connection with information indicating absence on December 16, 2015 was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2016-00026 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Schock's personal record shall be cleared of the charges immediately and he shall be provided the remedy prescribed in Rule 31 of the Agreement."

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.

The Claimant was given notice of the hearing in the instant claim.

Claimant received a notice to appear for an investigation in a letter dated December 21, 2015. The notice was to attend an investigation was:

[T]o develop the facts and to determine your responsibility, if any, in connection with information indicating that your absence on December 16, 2015 when considered with other absences during the period prior to

December 16, 2015 may be in violation of requirements of the Attendance Guidelines.”

As a result of facts developed at the investigation, the Claimant was notified by letter dated February 01, 2016:

The record contains credible testimony and substantial evidence proving that you violated the Attendance Guidelines dated May 24, 2013. 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  
(February 08, 2016 through February 12, 2016)**

**and**

**15 Days Deferred Suspension  
(December 16, 2015 through December 15, 2016)**

A review of your personal work record indicates that on January 29, 2016 you were assessed five (5) days suspension, which was deferred for one year. Therefore, in addition to the discipline you are assessed for the incident described above you are also required to serve the deferred suspension. Your total suspension is from:

***February 08, 2016 through February 19, 2016  
(Your RTW date is Monday, February 22, 2016)***

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.

Claimant is charged with violating the Carrier’s Attendance Policy for three absences. At issue in the instant matter is the absence of December 16, 2015.

The Carrier’s attendance Guidelines provide, in relevant part:

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, (3) any other absence or leave as long as proper approval has been granted.

An employee is 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 (PLD), vacation day, or Family Medical Leave Act (FMLA) day.”

Rule 23 A provides:

Employees unable to work because of personal injury or illness will, upon presentation of proper documentation, be granted a leave of absence for the period of time during which they are unable to work.

The following testimony discusses Carrier’s refusal to accept a note from Claimant’s physician regarding Claimant’s injury.

MR. LETIZIA: This is a letter from Mr. Schock’s – the doctor that Mr. Schock had seen on December 16, the day that allegedly triggered this investigation, I guess you could say. Do you know why this wouldn’t be accepted by the AMC as a – as proper documentation for a leave of absence?

CARRIER WITNESS: No, I do not.

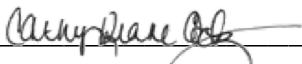
MR. LETIZIA: Okay. And then looking at Exhibit Number 10, specifically Rule 23 paragraph A. It says “Employees unable to work because of personal injury or illness will, upon presentation of proper documentation, be granted a leave of absence for the period of time during which they are unable to work.” Once again, looking at, you know, Exhibit 9 where it clearly says that Mr. Schock had slipped and fell that day causing injury to himself, do you know why the AMC would not accept – accept this and approve his absence as excused?

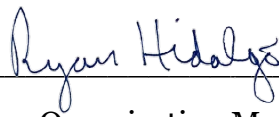
CARRIER WITNESS: No, I do not.


Carrier does not explain why the physician’s note was refused. The Carrier also does not explain how an injured employee could be expected to work without violating Carrier rules.

The evidence established that Claimant sought to present a medical excuse due to injury when calling off. There is no valid reason in the record for the refusal to accept the medical excuse from his physician.

Claim sustained.

  
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Carrier Member  
Cathy Cortez

  
\_\_\_\_\_  
Organization Member  
Ryan Hidalgo

  
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Neutral Member  
Brian Clauss

Dated: November 19, 2019