

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 107

---

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

and

CANADIAN NATIONAL RAILWAY, WISCONSIN CENTRAL

Carrier's File WC-BMWED-2016-00025

Claimant: D. SCHOCK

---

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

1. The discipline (deferred 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 1, 2015 was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2016-00025 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.

Claimant received a notice to appear for an investigation by letter dated December 17, 2015:

[T]o develop the facts and to determine your responsibility, if any, in connection with information indicating that your absence on December 01, 2015 when considered with other absences during the period prior to December 1, 2015 may be in violation of requirements of the Attendance Guidelines."

Following the investigation, Claimant was notified by letter dated January 29, 2016:

The record contains credible testimony and substantial evidence proving that you violated the Attendance Guidelines 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 Deferred Suspension  
(December 01, 2015 through December 01, 2016)”**

Claimant is charged with violating the attendance policy within the rolling period. The Organization claims that Claimant had justified and unrefuted reasons for missing work on the three cited days. Respectively, those reasons are: his mother was in the hospital, his car got stuck in a ditch, and he was sick. The Carrier responds that Claimant had two unexcused absences. The attendance policy was only implicated when Claimant had the third unexcused absence within the rolling period.

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:

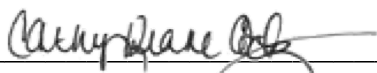
Employees unable to work because of personal injury or illness will, upon presentation of proper documentation, be granted a leave of absence for the period of time during which they are unable to work.


The 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.

Here, there are no procedural defects which void the discipline. On the merits, there is substantial evidence in the record that Claimant violated the Attendance Guidelines.

Claim denied.

  
\_\_\_\_\_  
Carrier Member  
Cathy Cortez

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

  
\_\_\_\_\_  
Neutral Member  
Brian Clauss

Dated: November 19, 2019