

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 109

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

and

CANADIAN NATIONAL RAILWAY, WISCONSIN CENTRAL

Carrier's File WC-BMWED-2016-00005

Claimant: D. WAAGE

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

1. The discipline (deferred suspension) imposed upon Mr. M. Waage for alleged violation of Carrier rules in connection with an incident that occurred on October 6, 2015 when Claimant allegedly failed to report a collision and/or caused damage to a company tool box was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2016-00005 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Waage'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 proper notice of the hearing in this claim.

Claimant received a notice to appear for an investigation regarding reporting a collision of two pieces of surfacing gang equipment and removal of a toolbox from a surfacing gang tamper that had been involved in the collision.

Following the investigation, Claimant was advised by letter dated December 14, 2015, that he was found in violation of US Operating Rules (USOR) General Rule M-

Railroad Property, USOR General Rule D-Reporting Injuries and Defects, and USOR General Rule V-Altering Railroad Equipment, and assessed discipline of ten days deferred suspension from service with a one year deferral period.

The Carrier maintains that there was substantial evidence in the record of Claimant's misconduct. He had a duty to report collisions and damage and failed to report the incident involving the collision of the surfacing gang equipment or the removal of the toolbox.

The Organization argues a procedural error which voids the discipline. According to the Organization, two operators were involved in a collision but were not called as witnesses with first-hand knowledge of the incident. On the merits, the Organization argues that Claimant did not commit the cited infractions. He had no first-hand knowledge of the incident,

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.

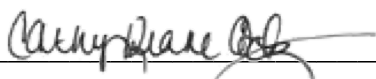
This Board has reviewed the evidence. The equipment operators took responsibility for the collision and signed waivers. The evidence does not show that they were charged with a failure to report the collision. Claimant was charged for failure to report the collision and removal, not for the underlying collision.

Claimant is charged with violations related to his failure to report the equipment collision and failure to report the removal of the toolbox from the Tamper that had been involved in the collision. The evidence shows that Claimant was the Foreman and the EIC for the surfacing gang. Accordingly, he had a duty to report collisions, damage, and removal of Company property. He did not report the collision. His testimony that it was not an emergency situation, therefore there was no need to report is not convincing. It was a collision that resulted in damage.


This Board also notes that the evidence shows that the toolbox was not a small or insignificant item, it was a large box mounted on the Tamper that required two people to carry. Its removal from the Tamper was not reported by the foreman.

There is substantial evidence in the record that Claimant committed the cited infractions and that his deferred suspension was commensurate to the conduct.


Claim denied.



Carrier Member
Cathy Cortez



Organization Member
Ryan Hidalgo



Neutral Member
Brian Clauss

Dated: November 19, 2019