

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 112

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

and

CANADIAN NATIONAL RAILWAY, WISCONSIN CENTRAL

Carrier's File WC-BMWED-2016-00038

Claimant: D. WAAGE

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

1. The discipline (suspension and disqualification) imposed upon Mr. M. Waage for alleged violation of Carrier rules in connection with an incident that occurred on April 7, 2016 when he allegedly failed to provide track protection for on-track equipment is arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2016-00038 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.

By letter dated April 13, 2016 the Carrier directed the Claimant to report for a formal investigation in connection with an incident that occurred on April 7, 2016 when Claimant allegedly failed to provide track protection for on-track equipment.

The investigation was held on April 26, 2016. Following the investigation, Claimant received a letter dated May 6, 2016, that provided in pertinent part:

I have reviewed the transcript of the formal investigation, which was held on April 26, 2016, to develop the facts and to determine your responsibility, if any, and whether or not you violated any CN rules, regulations and/or policies in connection with an incident that occurred on April 07, 2016 at or near Glendale, when you allegedly failed to provide track protection for your on-track equipment.

The record contains credible testimony and substantial evidence proving that you violated USOR -General Rule 8 - Reporting and Complying with Instructions, On-Track Safety Rules - Rule 100 – Fouling the Track, and On-Track Safety Rules - Rule 500 - Types of Protection.

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

10 Days Actual Suspension From Service

(April 28, 2016 through May 07, 2016)

And Disqualified for One Year as an Employee In Charge (EIC)

The Carrier maintains that there was substantial evidence in the record of Claimant's misconduct. He had a duty to provide protection for the on-track equipment and failed to do so. Rule 520 does not apply because it applies when equipment is traveling on the non-main track. Although Glendale Home Track is non-main track, it does not apply to equipment that has been parked and unattended.

The Organization argues a procedural error which voids the discipline. According to the Organization, Claimant's supervisor also acted as the hearing officer and intimidated witnesses through his questioning. On the merits, the Organization cites the Carrier official could not articulate the requirements of Rule 520 and instead suggested that Individual Train Detection should apply. According to the Organization, the Carrier official was misguided to the point of dangerous in his belief that Individual Train Detection should apply. The Organization continues that Rule 520 allows for the equipment to move without protection and governed the move in the instant matter.

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

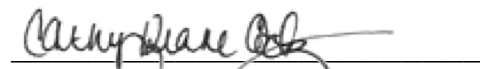
decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

This Board has reviewed the evidence in the instant matter. As stated by the Carrier during the processing of the instant claim, there is nothing in the Agreement that prohibits a supervisor from acting as a hearing officer. There is no procedural violation which voids the discipline.

On the merits, the evidence establishes that Rule 520 controlled the movement of the equipment at issue in the instant matter. The Carrier witness did not appear to understand Rule 520 and how it applied. He also did not appear to understand the application of Individual Train Detection. The evidence shows that the equipment was stopped in order for trains to pass and Claimant was not in violation of the cited Rules.

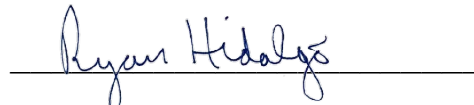
There is no substantial evidence in the record to establish the cited Rules violations.

Claim sustained.



Carrier Member

Cathy Cortez



Organization Member

Ryan Hidalgo



Neutral Member

Brian Clauss

Dated: November 19, 2019