

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 113

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

and

CANADIAN NATIONAL RAILWAY, WISCONSIN CENTRAL

Carrier's File WC-BMWED-2016-00046

Claimant: D. WAAGE

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STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

1. The discipline (suspension) imposed upon Mr. M. Waage for alleged violation of Carrier rules in connection with allegedly failing to be prepared for duty and/or not wearing the appropriate personal protective equipment (PPE) while sitting in his Ballast Regulator machine on June 28, 2016 was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2016-00046 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.

In a letter dated July 1, 2016, Claimant was notified to appear for an investigation in connection with allegedly failing to be prepared for duty and/or not wearing the appropriate PPE while sitting in his Ballast Regulator machine on June 28, 2016.

The investigation into this matter was held on July 25, 2016. Following the investigation, Claimant received a letter informing him that he was found guilty of the Rule violations and assessed a thirty day actual suspension.

The Carrier maintains that there is substantial evidence of the cited Rule violations. According to the Carrier, the evidence establishes, and was admitted by Claimant, that he removed his safety boots while he was in the ballast regulator and was waiting to perform his next move. The Carrier discounts the Organization's argument that it is "common practice" for employees to switch from normal boots to winter boots in waiting equipment. Here, Claimant was sitting with his unshod feet up on the window and letting his feet "cool off" because they were wet. He was not changing boots. The discipline was commensurate to the misconduct when the concept of progressive discipline is considered.

The Organization claims that there is no substantial evidence in the record to support a finding of a Rule violation. According to the Organization, Claimant had removed his boots while the equipment was stopped. The group was waiting and Claimant knew that he would be waiting for a while. His feet were drenched and he was trying to dry off the boots.

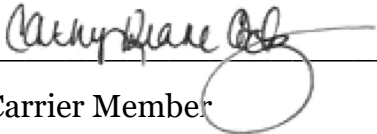
The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is 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.

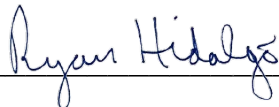
Claimant is charged with violating a safety rule by removing his work boots while occupying a piece of on-track equipment. Here, the evidence establishes that Claimant had removed his boots while the group was stopped. Claimant stated that the boots were removed because they were wet. The Organization points out that employees often change boots in stopped equipment – and here Claimant knew that the group would be stopped for a period of time. Had the facts been like the Organization's cited example, this Board


would have a difficult time denying the instant claim. However, those were not the facts presented in the instant matter. In this matter, the evidence shows that Claimant's boots were off, he was leaning back in a relaxed position, and had his feet up in the cab. Claimant's position suggests that he was doing more than merely drying his boots while waiting or changing boots.

There is substantial evidence in the record for the cited Rule violations. The discipline, although appearing to be harsh for this minor violation, was progressive at the time it was imposed. Accordingly, there is nothing in the record which would warrant altering the imposed discipline.

Claim denied.

  
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Carrier Member  
Cathy Cortez

  
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Organization Member  
Ryan Hidalgo

  
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Neutral Member  
Brian Clauss

Dated: November 19, 2019