

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 120

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2016-00037  
Claimant: M. WAAGE

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STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The discipline [ten (10) day actual suspension and serving ten (10) days of a deferred suspension] imposed upon Mr. M. Waage for alleged violation of USOR- General Rule B- Reporting and Complying with Instructions, USOR-General Rule H- Furnishing Information and Conduct, USOR-General Rule I- Duty Reporting or Absence in connection with an incident that occurred on March 18, 2016 was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2016-00037 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, as well as having his accredited months of service and all benefits that were not received during this time out of service.”

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 was advised by letter that an investigation was being held:

[T]o develop the facts and to determine your responsibility, if any, in connection with allegedly failing to report to your supervisor you were leaving early on March 18, 2016 and/or false reporting your time worked on

March 18, 2016, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

The investigation was conducted on April 14, 2016. Claimant was notified by letter that he was found in violation of US Operating Rules (USOR) Rule B-Reporting and Complying With Instructions, USOR Rule H-Furnishing Information & Conduct, and USOR Rule I-Duty Reporting or Absence.

Claimant received discipline of a ten-day actual suspension and also ordered to serve a deferred suspension, for a total suspension of twenty (20) days.

The Carrier maintains there is substantial evidence in the record that Claimant left his assignment early and entered false and misleading information in the time records system. Claimant only changed the record after confronted. The ten-day suspension was commensurate with the misconduct.

The Organization argues a lack of substantial evidence in the record. The Organization argues that the General Chairman's testimony that leaving early is a common practice on the last day of an assignment for mobile employees is unrefuted. Further, the Carrier witness testified that time cards can be corrected prior to final submission and that is what Claimant did – he corrected his time entry to reflect the seven hours he worked. Claimant did not violate Rule I because he was not excessively laid off. Claimant could do no further work and left. He did not violate the cited rules and previously has been recognized by the Carrier as a model employee.

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, the Carrier has not proven a violation of Rule I. This is not a matter of excessive layoff or unavailability. The reference to Rule I is stricken from the discipline.

The record contains substantial evidence of the other cited infractions. Claimant admitted to departing the worksite an hour early. He did not notify a supervisor of his departure and his original time card entry reflected an eight-hour entry despite not working eight-hours.

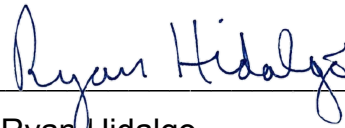
The evidence also establishes that Carrier did not exceed its discretion when it issued the ten-day suspension. The discipline was progressive and commensurate with the misconduct.

Claim denied.



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John K Ingoldsby  
Carrier Member



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Ryan Hidalgo  
Organization Member



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Brian Clauss  
Neutral Member

Dated: 12-18-20