

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 122

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2016-00050

Claimant: J. SMITH

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The discipline [thirty (30) days actual suspension and imposition of a ten (10) day deferred suspension] imposed upon Mr. J. Smith for alleged violation of the Attendance Management Center call in procedures September 19, 2016 in connection with information indicating absence on August 4, 2016 was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2016-00050 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Smith'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.

The Carrier directed the Claimant to report for a formal investigation in connection with allegations that the Claimant failed to follow call in procedures to report his absence and/or when the Claimant failed to report for duty on August 4, 2016 without permission.

Following a postponement, the investigation was held on September 1, 2016. The Carrier notified Claimant in a letter dated September 19, 2016 the he was proven to have

violated the Attendance Management Center call-in procedures and assessed Claimant a thirty-day actual suspension and would be required to serve a ten (10) day deferred suspension stemming from an unrelated August 1, 2016 investigation.

The Carrier asserts substantial evidence in the record. Track Supervisor Powell not attending the hearing did not impact the undisputed facts that Claimant requested a personal day, the supervisor refused, Claimant was told to phone the attendance number, Claimant did not phone in to notify of his day off, and Claimant did not report on August 4, 2016.

The Organization responds that it was clear error for the hearing officer to note the procedural objection, but not rule on that objection. The Organization objected to a material witness not being present. The Carrier must prove its case with substantial evidence and substantial evidence requires the attendance of the witnesses with knowledge of the facts and who is also named in the investigation letter. The Carrier notified that the key witness would be present then did not produce that key witness. That is unfair conduct on its face. Further, even absent the procedural error, Claimant's testimony that he did not have the phone number for the attendance management center was un rebutted. Finally, although excluded as evidence, Claimant's disciplinary record was made part of the record.

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.

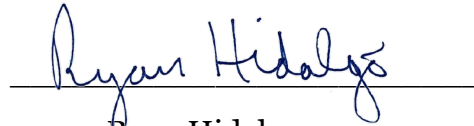
This Board has reviewed the evidence. Although the Carrier notified that the track supervisor would be attending the hearing, there is no dispute that Claimant was denied a personal day and instructed to call the Attendance Management Center. It is also undisputed that he did not call the AMC.

There is substantial evidence in the record that Claimant violated the cited rules. Regardless of whether the track supervisor was present for the hearing, there is no dispute about the facts. Further, even if it was error to include the disciplinary history in the record after it was excluded, there is no harm shown by that inclusion. Claimant received a thirty-day suspension in keeping with the progressive discipline policy.

Claim denied.



John K Ingoldsby
Carrier Member



Ryan Hidalgo
Organization Member



Brian Clauss
Neutral Member

Dated: 12-18-20