

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 124

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2017-00006

Claimant: M. WAAGE

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The discipline [thirty (30) day actual suspension and imposed thirty-five (35) day deferred suspension] imposed upon Mr. M. Waage for alleged violation of LIFE U.S. Safety Rules- Section III: Engineering Rules, Recommended Practices, and PPE-E-22 Personal Protective Equipment (PPE) and Clothing, On-Track Safety Rules- Rule 300-Job Briefings, USOR General Rule I- Duty Reporting or Absence in connection with an incidents that occurred on December 27, 28 and 29, 2016 was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2017-00006 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 notified by the Carrier in a letter:

The investigation is being held to develop the facts and to determine your responsibility, if any, in connection with incidents that occurred on

December 27, 28, 29, 2016 at or near Keenan, Minnesota. The investigation will determine if on December 28th at approximately 1425 hours, you allegedly, 1, failed to wear proper PPE while on duty, and/or, 2, failed to have your job briefing book completed at the start of your shift on the 28th, and/or, 3, failed to have your machine log book completed on the 27th, and/or, 4, failed to notify a mechanic or your supervisor that the machine did not start at the beginning of your shift until 1300.

Further, the facts will be developed to determine whether you failed to report for duty on time on December 29th and/or failed to call the AMC or your supervisor to report you will be late for work on December 29th, and whether you violated any company rules, regulations and/or policies in connection with the incidents as outlined above.

Following a hearing, Claimant was notified in a letter:

I have reviewed the transcript of the formal investigation, which was held on January 19, 2017, 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 incidents that occurred on December 27, 28 and 29, 2016 at or near Keenan, MN. The investigation will determine if on December 28, 2016 at approximately 1425 hours, if you allegedly (1) failed to wear the proper PPE while on duty, and/or (2) failed to have your job briefing book completed at the start of your shift on the 28th, and/or (3) failed to have your machine log book complete on the 27th, and/or (4) failed to notify a mechanic or your supervisor that your machine did not start at the beginning of your shift until 1300. Further the facts will be developed to determine whether you failed to report for duty on time on December 29, 2016, and/or failed to call the AMC or your Supervisor to report you would be late for work on December 29, 2016, and whether you violated any Company rules, regulations and/or policies in connection with the incidents as outlined above.

The record contains credible testimony and substantial evidence proving that you violated LIFE U. S. Safety Rules - Section III: Engineering Rules, Recommended Practices, and PPE - E-22 Personal Protective Equipment (PPE) and Clothing, On-Track Safety Rules - Rule 300 - Job Briefings, USOR - General Rule

I - Duty Reporting or Absence.

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

30 Days Actual Suspension From Service (December 29, 2016 through February 08, 2017) Your record indicates you were assessed 15 days deferred suspension on September 8, 2016 and 20 days deferred suspension on November 21, 2016. These deferred suspensions will also be served starting February 09, 2017.

Your deferred suspension of 35 days will be served as follows: [dates omitted].

The Carrier argues that Claimant was proven to have committed the above-cited violation through substantial evidence. The evidence shows that he did not properly notify of his malfunctioning/non-operational assigned equipment until late in the day, he was not wearing his PPE when working, he did not participate in a job briefing, and he failed to report to work on time.

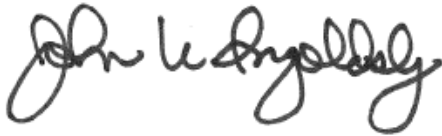
The Organization argues that the infractions have not been proven. Grievant was not wearing his hard hat and reflective vest because he was not working and not in the foul. He was awaiting the mechanic or standing by the machine while the mechanic was servicing the end loader. He was not required to be wearing his hard hat or vest. He attended the job briefing, but because his machine was broken and the group left to perform other tasks. He was not able to sign the briefing book later because the book was with the group and is usually signed later in the day, despite the briefing occurring at the beginning of the work day. Further, Claimant was on the property prior to 0700 and in his truck taking an ibuprofen for his root canal pain. He was ready to report for work.

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.

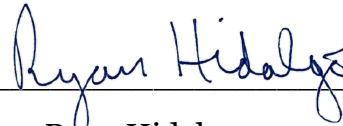
Here, the evidence shows that Claimant was not wearing a hardhat and a reflective vest when with his machine on the property in the company of the mechanic. The applicable rule provides that the reflective vest is to be worn "when performing duties outside." Claimant was on company time and performing company work in the lot. He was required to be wearing the reflective vest that he admitted not wearing. The testimony also shows that Claimant did not participate in the job briefing as evidenced by the log book. His testimony was contradicted by a Carrier witness. Further, the evidence also establishes that Claimant did not timely report the malfunctioning/inoperable end loader

as required by the rule's requirement that it "must also be reported by the first available means of communication." Claimant did not comply with that rule. Finally, even if Claimant was in his truck in the parking lot, he did not report for work on time. Although perhaps only a few minutes delayed in arriving, he did not arrive on time.

Claim denied.



John K Ingoldsby
Carrier Member



Ryan Hidalgo
Organization Member



Brian Clauss
Neutral Member

Dated: 12-18-20