

BEFORE PUBLIC LAW BOARD NO. 7566  
CASE NO. 159/Award No. 159

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2015-00015  
Claimant: Scott Wojcik

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**Statement of Claim**

“Claim of the System committee of the Brotherhood that:

1. The discipline [five (5) day actual suspension from service (October 5, 2015 through October 9, 2015) and disqualified as Employee In Charge (EIC) for one (1) year (October 2, 2015 through October 1, 2016)] imposed upon Mr. S. Wojcik for alleged violation of USOR - General Rule B - Reporting and Complying with Instructions, USOR-General Rule W - Job Briefings, LIFE U. S. Safety Rules - Section II: Core Safety Rules - Clothing and Personal Protective Equipment (PPE) #3, On-Track Safety Rules - Rule 300 - Job Briefings and On-Track Safety Rules - Rule 904 - Stopping and Safe Braking Distance in connection with an incident that occurred on October 2, 2015 was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2015-00015 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Wojcik'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 seniority restored, his accredited months of service and all benefits that were not received during his 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.

**Facts**

Hired on March 17, 1997, the Claimant has established and holds seniority in the Carrier's Maintenance of Way Department and was assigned as a Track Inspector at the time of the incident

considered herein. He received a three (3) day actual suspension effective August 11, 2008 when he waived investigation after an accident with a Carrier vehicle. On October 2, 2015 a Carrier manager reported that he had observed the Claimant throwing a switch at a crossing near Bradley, WI without wearing his required PPE. Discussion with the Claimant convinced the manager that Mr. Wojcik had not performed a job briefing or a distance-to-stop test on his vehicle and had failed to properly record all events as required. By letter dated October 5, 2015, the Claimant was directed to report for an investigation one week later. By letter dated October 15, 2015, the Carrier informed the Claimant of its conclusion that he was guilty of violating those rules and policies set forth in the above-noted claim and that he was being assessed a five (5) day actual suspension and was being disqualified as an EIC for one (1) year. On October 20, 2015 the Organization filed a timely claim on Mr. Wojcik's behalf. The claim was properly progressed on the property without resolution and advanced to this Board for final and binding adjudication.

### **Carrier Position**

Evidence adduced at the investigation, including the Claimant's admission, provides sufficient evidence of his guilt. The investigation was fair and impartial without prejudgment, with the Claimant afforded representation, with a Hearing Officer who acted professionally and who did not commit procedural violations. The discipline was just and with sufficient cause as this was the Claimant's third disciplinary measure in eighteen (18) years. The Carrier acted within its managerial rights in disqualifying the Claimant from the supervisory capacity inherent in the EIC position. The Organization's six (6) year delay in bringing this matter before the Board is noted. This is an appellate procedure with the Board not to substitute its judgment for that of the Carrier once charges have been proven.

### **Organization Position**

While the five (5) day actual suspension was logical, the year suspension from EIC duties amounted to a loss of \$8,000. This was excessive, not progressive discipline. The Claimant had performed the brake test and had done the briefing, but the Carrier used USOR – General Rule B anyway.

### **Findings**

USOR-General Rule B requires that "Employees will report to and comply with instructions from supervisors who have the proper jurisdiction" and . . . "with manager-issued instructions applying to their duties." USOR-General Rule W notes that "Job Briefings and Peer to Peer Communications are held among employees to ensure understanding of safety related issues . . ." LIFE U.S. Safety Rules – Section II: Core Safety Rules – Clothing and Personal Protective Equipment states "3. Know, wear, and maintain approved *personal protective Equipment (PPE)* and clothing as required by job task and/or *work environment* including off-site

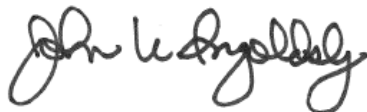
industries as required. On-Track Safety Rules – Rule 300 – Job Briefings sets forth guidelines for when job briefings must be conducted and information to be included in such briefings. Rule 904. Stopping and Safe Breaking Distance states that “Operators of on-track equipment are required to conduct “Distance to Stop Tests” to ensure that brakes are operating properly.” The rule further specifies how these tests are to be conducted and what information about the test is to be recorded.

During the investigation, Hearing Officer Joshua Glause stated: “I think we’ll drop the [USOR General Rule B] charge on that one because I can’t see any reason to keep it in here” (TR-35, ll 1-3). Yet, the October 15, 2015 letter informing the Claimant of imposed discipline asserts that he violated General Rule B as well as other rules and policies. The Carrier cannot eliminate a charge during the investigation and then reinstate it as partial justification for the decision to discipline. However, only because General Rule B is one of several rules the Claimant was found to have violated, the Board views the reinstatement of General Rule B as harmless error that does not alter consideration of the discipline. The testimony of Track Supervisor Roger Wolf and the Claimant, including Mr. Wojcik’s admissions, establish his violation of the other above-noted rules. Moreover, the Board notes that the Organization acknowledged the appropriateness of the five (5) day actual suspension during the on-property processing of the claim.

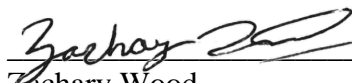
As for the disqualification, the Board finds itself in an impossible position. The disqualification was from October 2, 2015 – October 1, 2016, now five years ago. In addition, the disqualification was assessed under a previous discipline policy, as the current policy, Version 1.2, dates from October 23, 2017. The record does not contain the relevant discipline policy; therefore, this Board has no basis for considering whether the disqualification was consistent with management’s rights and/or the discipline policy itself. This, plus the fact that the disqualification expired over five (5) years ago compels the Board to find the matter moot. We make no ruling on whether the claim may be considered to include the disqualification and state that the unique aspects of this case, including the timing of the appeal to this Board, compel us to issue this award on a non-precedential basis.

## **Award**

Claim denied.



John K. Ingoldsby  
Carrier Member



Zachary Wood  
Organization Member

A handwritten signature in blue ink, appearing to read "I.B. Helburn", followed by a long horizontal line.

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I.B. Helburn  
Neutral Member

Dated: December 9, 2021