

BEFORE PUBLIC LAW BOARD NO. 7566
CASE NO. 171

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION – IBT RAIL CONFERENCE
and
WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED- 2018-00032
Claimant: T. Hjelsand

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The dismissal imposed upon Mr. T. Hjelsand for alleged violation of the USOR Rule 1 - Duty - Reporting or Absence and Attendance Management Center (AMC) Attendance Guidelines dated October 30, 2018 in connection with information indicating absence on October 23, 2018 was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2018-00032 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Hjelsand'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.

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 information indicating that your absence on September 5, 2018, when considered with other absences during the 12 weeks including and immediately preceding September 5, 2018, may be in violation of requirements of the Attendance Guidelines.

The investigation was conducted on October 23, 2018. Claimant was advised by letter dated October 30, 2018, which provided:

The record contains credible testimony and substantial evidence proving that you violated: USOR Rule I-Duty Reporting or Absence and AMC Attendance Guidelines.

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

Dismissal

The Carrier maintains that substantial evidence has shown that Claimant violated the attendance policy when he was unavailable for a fourth occurrence during the review period. Claimant was advised of the rules like every other employee and had ample time to be aware of any rule changes when he returned to work following a suspension. Based upon his disciplinary history, there was no abuse of discretion in terminating Claimant.

The Organization claims that Claimant requested a leave of absence in order to reinstate a driver's license and obtain a vehicle. The supervisor erred when he denied the leave request without explanation. Further, the Claimant could not be expected to know rules that were implemented when he was off on suspension. Claimant should not have been terminated for violating a rule of which he was unaware.

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 record is clear that Claimant requested a leave of absence in order to reinstate his driver's license. That request was denied and Claimant marked off with the

AMC. This mark off was the fourth incident within the 12-week review period. The record establishes the violation.

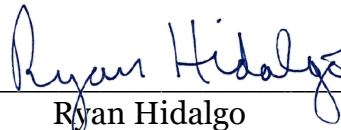
The Organization alleges a rule violation in denying the leave of absence request for not explaining the reason for the denial. There is no support in the facts or the Agreement for the Organization's argument. The record shows that there is substantial evidence of the attendance violation.

The Organization also argues that the discipline was improper and excessive. However, the record also establishes that the discipline was progressive and commensurate to the misconduct. The Carrier did not abuse its discretion when it terminated Claimant.

Claim denied.



John K Ingoldsby
Carrier Member



Ryan Hidalgo
Organization Member



Brian Clauss
Neutral Member

Dated: 12-18-20