

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 197

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00036

Claimant: C. Holmquist

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STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The discipline (Letter of Caution) imposed by letter dated April 26, 2019 upon Mr. C. Holmquist for alleged failure to meet the requirements of the Attendance Guidelines during the twelve (12) week period prior to and including March 29, 2019, was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2019-00036 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Holmquist's April 26, 2019 Letter of Caution should be expunged from his record immediately.”

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.

On April 26, 2019, the Carrier issued a letter to Claimant that provides, in relevant part:

This letter serves to follow up on our discussion.

CN realizes that occasional, unscheduled absences from work may occur. However, predictable, reliable attendance is critical for CN's successful business operations and is an essential function of our employees.

Employees are required to work regularly and without excessive layoffs or absences.

To help achieve this, the company has established Attendance Guidelines which have been published for the information of all employees. You have been supplied with a further copy today. Your attendance pattern has not met the requirements of the Attendance Guidelines during the 12-week period prior to and including March 29, 2019 as you had more than 1 occurrence that is on a holiday or immediately before or after a holiday, rest day, Personal Leave Day (PLD), vacation day, or Family Medical Leave Act (FMLA) day.

Failure to comply with the requirements of the Attendance Guidelines going forward will result in the matter being dealt with under the discipline provisions of your Collective Bargaining Agreement.

The purpose of our discussion today has been to draw this matter to your attention in an effort that you can make any behavior changes necessary to avoid this becoming a work performance matter. I look forward to your cooperation in this regard.

Brion King IC-Manager Asst Port

The Organization maintains that the Carrier's Letter of Caution is discipline. The Carrier violated the Agreement when it issued this letter because it was not issued within the required twenty days of the incident, there was no hearing to assess culpability, and there was no waiver of hearing. Timeliness and either a hearing or a waiver are required pursuant to Rule 31 and none of the conditions were satisfied. The Carrier has issued the first step in the discipline process, yet has no avenue for contesting culpability or appealing the letter. The letter informs that a "warning" will no longer apply to similar conduct and discipline will issue for subsequent infractions. Therefore, the letter is discipline.

In the correspondence dated April 19, 2019, the Organization wrote:

Essentially, a Letter of Caution is the first step in the discipline process. It is to serve as a warning, which ultimately serves the employee notice that they have used up their "warning" and will be disciplined further next time. A Letter of Caution is not a pat on the back. This is a disciplinary letter and undoubtedly a step in the ladder of progressive discipline.

With this said, the employee did not waive his contractual right to an investigation and no discipline should be assessed without the right to an investigation in accordance with the Collective Bargaining Agreement.

The Carrier asserts that “Your attendance pattern has not met the requirements of the Attendance Guidelines during the 12-week period prior to and including March 29, 2019 as you had more than 1 occurrence that is on a holiday or immediately before or after a holiday, rest day, Personal Day (PLD), vacation day, or Family Medical Leave Act (FMLA) day.”

This statement clearly implies that the Claimant did not follow these Guidelines.

The Carrier maintains, as provided in the submission:

[T]he Claimant’s attendance did not comport with the Carrier’s Attendance Guidelines. Thereafter, he was given a Letter of Caution to put him on notice of the deficiency. There is no provision in the Agreement that precludes the Carrier from issuing a Letter of Caution to an employee for any number of 4 reasons. It is a non-disciplinary letter meant to inform an employee of a behavior or act that does not comport with Carrier rules or policies.

The Carrier continues that the Letter of Caution is the same as a Letter of Instruction, is not considered discipline, and does not appear in the discipline section of an employee’s work history.

The evidence is undisputed that the Letter of Caution issued more than twenty days after the incident, that there was no investigation hearing, and that there was no waiver of hearing.

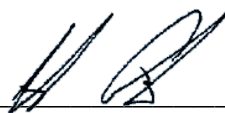
The Carrier cites the decision in PLB 6043 Award 205 as instructive because it discusses a letter of instruction and that it is not discipline. In that award, the Board held that letters of instruction are not discipline but serve to warn the employee of conduct that could eventually end up in discipline.

Here, an examination of the record shows that there was no discipline issued as part of the letter of caution. The letter detailed how Claimant was not complying with the attendance policy and reminded him of the requirements of the attendance policy. Advising an employee through a letter, whether of caution or instruction, is not discipline. It is a notice to the employee that their conduct should be corrected and discipline avoided.

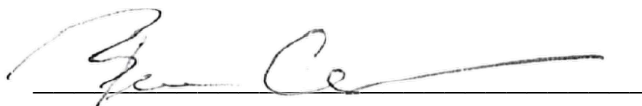
Claim denied.



Patrick Crain  
Carrier Member



Adam Gilmour  
Organization Member



Brian Clauss  
Neutral Member

Dated: December 20, 2023