

BEFORE PUBLIC LAW BOARD NO. 7566
CASE NO. 212/AWARD No. 212

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00051
Claimant: Daniel Vicklun

Statement of Claim

“Claim of the System committee of the Brotherhood that:

1. The dismissal imposed upon Mr. D. Vicklun for alleged violation USOR General Rule A - Safety, USOR General Rule H - Furnishing Information and Conduct, USOR General Rule I – Duty - Reporting or Absence, USOR General Rule M - Railroad Property, USOR General Rule P - Employee Conduct and On-Track Safety Rule 804 - Responsibilities of Individual Roadway Workers was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2019-00051 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Vicklun'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 including, medical, dental and vision premiums, co-pays, deductibles and all other out of pocket expenses as well as 401(k) and CN Stock Purchase incentives.”

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

Having been hired on April 28, 2008, Claimant D. Vicklun has established and holds seniority in the Carrier's Maintenance of Way Department. He was working as a Surfacing Gang

Foreman at the time of the incident that resulted in his dismissal. His personal work record includes one Level 1 Letter of Reprimand effective January 25, 2019. On October 3, 2019, while EIC and having obtained track authority, the Claimant asked Foreman B. Barnes, alternate EIC, to take temporary control of all crews in the area. Foreman Barnes agreed and the Claimant went off duty and used a Carrier vehicle to leave the area to attend the first quarter of his son's football game. While at the game, the Claimant allegedly gave false information to his supervisor. By letter dated October 7, 2019 the Claimant was directed to attend an investigation. Following the investigation, held on October 24, 2019, by letter dated November 12, 2019, the Carrier informed Mr. Vicklun that he was deemed guilty of violating each of the aforementioned rules and was dismissed. On November 19, 2019 the Organization filed a timely claim on Mr. Vicklun's behalf. The claim was properly progressed on the property without resolution and advanced to this Board for final and binding adjudication.

Carrier Position

Investigation testimony, including the Claimant's admission that he had not asked his Supervisor for authorization to leave and that he had violated multiple rules, provide substantial proof of the allegations. 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 dismissal was just and with sufficient cause as the Claimant, with a prior Level 1 violation, was guilty of violating multiple rules adding to a Level 4 violation that called for immediate dismissal. Within this appellate process, the Board is not to substitute its judgment for that of the Carrier in the face of proven guilt.

Organization Position

The Carrier has not met its burden of proof. The Claimant properly obtained authority so that protection for the crew was in place. Mr. Barnes, the alternate EIC, neither objected to nor refused to take over as alternate EIC. It is common for EICs to hold authority while not physically at the work site. Mr. Vicklun placed himself off the clock during the time he was away. The use of Company vehicles outside of work is allowed and encouraged. The Claimant testified that he has stopped at public places such as a hotel or gas station while operating a Carrier vehicle. The dismissal was harsh, arbitrary and unwarranted in view of Mr. Vicklun's relatively clean record over his ten (10) plus years with the Carrier.

Findings

USOR General Rule A. Safety states that "Safety and a commitment to obey the rules are the most important elements in performing duties. If in doubt, the safe course must be taken."

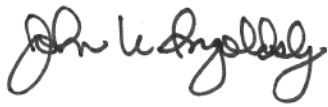
General Rule H. Furnishing Information and Conduct, states in relevant part that “Dishonesty, . . . desertion from duty, making false reports or statements, concealing facts concerning matters under investigation . . . are prohibited.” General Rule I. Duty-Reporting or Absence states in relevant part that “Employees must not engage in other business, be absent, allow others to fill their assignment, or exchange duties with others, unless authorized to do so.” General Rule M. Railroad Property prohibits the personal use of railroad property. General Rule P. Employee Conduct, prohibits employees from engaging in non-railroad activities while on duty. On-Track Safety Rule 804. Responsibilities of Individual Roadway Workers states that “Each Roadway worker is responsible for following on-track safety and operating rules.”

There is more than substantial evidence establishing that the Claimant committed each of the violations that he has been charged with, as he has admitted to his actions on October 3, 2019. He used his Carrier vehicle to absent himself from his Foreman/EIC duties without authorization to make a twenty (20) mile round trip for personal business—to observe the first quarter of his son’s football game in order to fulfill a commitment made to the boy. Foreman Vicklun was gone more than the few minutes he indicated to Mr. M. Barnes. Moreover, when Track Supervisor E. Stauber called the Claimant while the latter was at the football game and asked about the background noise, the Claimant admittedly and dishonestly attributed the noise to his cell phone rather than to the assembled onlookers. The dishonest response further establishes that Foreman Vicklun knew that he should have remained on duty. That the crews were not left unprotected, that Mr. Barnes did not object to taking over as alternate EIC, that there are some legitimate uses of Carrier vehicles and that the Claimant removed himself from the clock while he was gone do not begin to justify his irresponsible behavior. Nor does his commendable love for his son justify that behavior.

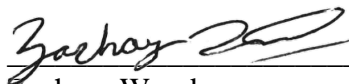
The Claimant’s unauthorized temporary abandonment of his responsibilities and his dishonesty were egregious. Even considering the Claimant’s tenure, this Board finds that the Carrier’s decision to dismiss Foreman Vicklun was an appropriate response. Nor do the prior awards submitted by the Organization, four (4) being cases where the Carrier failed to meet its burden of proof and the fifth, a suspension for a refusal to wear PPE, serve to alter the Board’s conclusion.

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 flourish.

I.B. Helburn
Neutral Member

Dated: December 9, 2021