

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 213

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00048

Claimant: B. Simpson

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STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The discipline [thirty (30) day actual suspension] imposed upon Mr. B. Simpson after the Carrier found him guilty of USOR General Rule B - Reporting and Complying with Instructions and Engineering Peer to Peer Communication for allegedly failing to remove a temporary ten (10) miles per hour (mph) slow order on a joint pull apart after he repaired it at approximately 1200 hours on August 16, 2019, was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2019-00048 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Simpson's personal record shall be cleared of the charges immediately and he shall be provided the remedy prescribed in Rule 31 of the Agreement. Additionally, the Claimant shall have 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 welded a rail defect referred to as a “pull apart” on August 16, 2019. There was a 10 mph slow order for that section of track. The slow order was obtained by a

supervisor. There is no dispute that Claimant did not remove the slow order after completing the work.

The Carrier sent Claimant notice to attend an investigation dated August 27, 2019, which provided:

The investigation is being held to develop the facts and to determine your responsibility, if any, in connection with an incident that occurred August 16, 2019 at or near MP 120.7 on the Rainy Sub, in which you allegedly failed to remove a temporary 10 mph slow order on a joint pull apart after you repaired it, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

Following an investigation, the Carrier notified Claimant that he violated USOR Rule B – Reporting and Complying with Instructions and Engineering Peer to Peer Communication. Claimant was given a 30-day actual suspension from October 14, 2019 through November 12, 2019.

The Carrier maintains there is substantial evidence of the infraction. Claimant testified that he knew there was a slow order over the defect area, he repaired the defect, he has previously removed slow orders, that he was responsible for removing the slow order following the repair, and did not remove the slow order.

The Organization's position is the slow order was applied by Track Inspector A. Lind and not by the Claimant. Track Inspector Lind has some responsibility for then removing the slow order. Claimant's experience is almost always Thermite welding, which does not require slow orders to be placed or removed. Consequently, Claimant was not intimately familiar with slow order procedure.

The Organization continues that Claimant released his track authority upon completion of the Thermite weld. RTC did not comment or question the slow order when Claimant released his authority. TMDS did not show a slow order and Claimant relies on that system for tracking authority and orders. He presumed managers or RTC had removed the slow order. Charging Officer J. Bard acknowledged occasions when someone other than the welder would remove a slow order. The flaw in TMDS meant Claimant could not see the slow order when checking TMDS.

The Organization continues that RTC ignored the slow order despite the common RTC practice of calling Maintenance of Way supervision to inquire about outstanding slow orders for repair. That did not happen.

The Organization concludes that, if Claimant was culpable for not removing the slow order, the supervisors were also equally culpable yet were not disciplined. That is disparate treatment.

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.

The evidence shows that Claimant performed the repair but did not remove the Slow Order. The Carrier notes Claimant's testimony as evidence of guilt: "In the end, I had a miscommunication with the inspector, I thought he removed the 10 mph." However, this statement does not establish the Rule violation. This statement reinforces the testimony about the TMDS system showing no restriction after Claimant returned his authority to RTC. The testimony showed that Claimant relied upon TMDS and, when it showed his authority removed, it did not display the Slow Order. Claimant assumed that a supervisor had removed the slow order. It was reasonable for Claimant to rely on the Carrier's TMDS system.

There is no substantial evidence in the record to establish the violation.

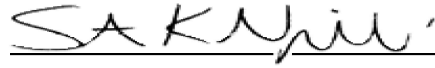
Claim sustained. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



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Adam Gilmour

Organization Member



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Steven Napierkowski

Carrier Member



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Brian Clauss

Neutral Member

Dated: December 18, 2024