

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 214

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2020-00015

Claimant: D. Johnson

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STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The discipline [fifteen (15) day actual suspension from service] imposed upon Mr. D. Johnson for alleged violation of company rules, regulations and/or policies at approximately 1045 hours, on December 6, 2019 at or near the roundhouse in Proctor, Minnesota, in which he allegedly ran into a garage door with the loader while he was backing it up into a garage stall was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2020-00015 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Johnson'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 was operating an endloader; he was backing the machine into a heated garage at a slow speed when he clipped the doorway with the bucket. The building was

damaged. Claimant provided a statement that he was backing the loader into the garage due to the brakes not working and the hydraulics being affected by the cold. The bucket would not release due to the frozen hydraulics. Claimant admitted striking the doorway with the bucket.

The Carrier mailed Claimant an investigation notice dated December 20, 2019. The notice was in connection with an incident that occurred at approximately 1045 hours, on December 6, 2019, at or near the roundhouse in Proctor, MN, in which he allegedly ran into a garage door with the loader while he was backing it up into a garage stall. The investigation occurred on January 14, 2020.

The Carrier sent Claimant a letter dated January 20, 2020:

I have reviewed the transcript of the formal investigation, which was held on January 14, 2020, to develop the facts and to determine your responsibility, if any, and whether or not you violated any CN rules, regulations and/or policies in connection with an incident that occurred at approximately 1045 hours, December 06, 2019 at or near the roundhouse in Proctor, MN, in which you allegedly ran into a garage door with the loader while you were backing it up into a garage stall.

The record contains credible testimony and substantial evidence proving that you violated:

Violation Type: Level 2 USOR General Rule A - Safety USOR General Rule C - Alert and Attentive

In consideration of the incident, the proven rule violations, and your past discipline record, you are hereby assessed the following discipline(s):

15 Days Actual Suspension From Service (January 29, 2020 through February 12, 2020) Your return to work date is Thursday, February 13, 2020.

The Carrier maintains that there is substantial evidence in the record that Claimant struck the garage doorway with the bucket of the end loader. The Claimant admitted his infraction in a written statement. The Organization's claims that it was improperly noticed of the violation defies the evidence. Claimant admitted the violation and the notice met the procedural requirements.

The Organization argues a procedural violation that negates the discipline. The Organization maintains that the Carrier failed to properly cite the alleged rule violations

in the notice of investigation. Because the notice was faulty, the Organization was not properly placed on notice as required by Rule 31.

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.

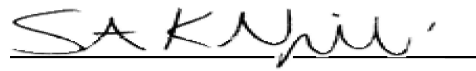
Claimant struck the side of the garage entrance while backing an end loader with malfunctioning brakes and frozen hydraulics. Claimant admitted to the collision in his statement. He was trying to move the end loader into the garage to thaw it. Obviously, moving equipment with malfunctioning brakes and frozen hydraulics is a risky venture and that risk clearly failed. The Organization was on notice that of the alleged misconduct. There is no question that Claimant struck the building with the end loader.

Claim denied.

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Adam Gilmour

Organization Member

A handwritten signature in black ink, appearing to read 'SAKN', is written over a horizontal line.

Steven Napierkowski

Carrier Member

A handwritten signature in black ink, appearing to read 'B. Clauss', is written over a horizontal line.

Brian Clauss

Neutral Member

Dated: December 18, 2024