

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 246

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2020-00044

Claimant: W. Mullins

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STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The dismissal imposed upon Mr. W. Mullins for alleged violation of the CN SAFE Policy was arbitrary, capricious, unwarranted and in violation of the Agreement (Carrier's File WC-BMWED-2020-00044 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Mullins' 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 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.

The Carrier sent Claimant a notice dated October 9, 2020, that provided in relevant part:

You are hereby notified to attend a formal investigation to be held as directed below, Thursday, October 22nd, 2020, 1000hours, CN Conference

Room, 1105 Henry Street, Neenah, Wisconsin. This investigation is being held to develop the facts and determine your responsibility, if any, in connection with an incident that occurred at approximately 0715 hours on October 8th, 2020 at or near Neenah, Wisconsin, which you allegedly tested positive for alcohol following a FRA random test, and whether you violated any company rules, regulations, and/or policies in connection with the incident.

A hearing convened on October 22, 2020. Following the investigation., Claimant was notified in a letter that he was dismissed from service. This claim followed.

The Carrier maintains that there was substantial evidence of the violation in the record. Claimant was terminated for appropriate reasons following a hearing that was fair. According to the Carrier, there is no dispute to the facts. Claimant was subjected to random drug testing and appeared for the testing. His test revealed the presence of prohibited substances and he was terminated for cause. There was substantial evidence of the violation.

The Organization maintains that there are procedure faults which warrant granting the claim and returning the Claimant to his position. Improper witnesses at the hearing created the procedural error that warrants dismissal. Absent the appropriate witnesses testifying about the drug testing, there can be no substantial evidence. Claimant provided a reasonable explanation about the positive test and he should be returned to work because there is insufficient evidence in the record. Claimant is a long-term employee and should not be terminated.

The Organization continues that Claimant sought EAP and should have been returned to work. The CN SAFE Policy cites the supervisor, the EAP Manager, and the Medical Services Department as the Carrier managers who make the decision, not Labor Relations. If he successfully completed EAP, Claimant should have been returned to work.

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.

A review of the procedural defenses indicate that there were no errors which would warrant overturning the discipline and granting the Claim. On the merits, the evidence shows that Claimant violated the drug and alcohol policy. The violation was proven through the results of the random drug and alcohol test, which Claimant failed by having alcohol in his system beyond the allowable 0.02 BAL. Although the Organization maintains that it was error to terminate Claimant after he sought EAP assistance, the evidence, rules, and prior awards indicate a contrary result.

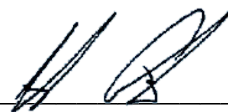
There is substantial evidence in the record that Grievant violated the CN SAFE Policy and tested positive for alcohol beyond the allowable limit. The next question is whether the discipline of termination was arbitrary or capricious and thereby an abuse of Carrier discretion for the imposition of discipline. The record and submissions show that the Level 4 misconduct is a serious offense. Obviously, being under the influence of drugs or alcohol is a very serious matter. Regardless of whether the Claimant availed himself to EAP, the decision on discipline rests with the Carrier. Here, the evidence shows that the Carrier has been consistent in the application of discipline for Level 4 violation of the drug and alcohol policy. A review of the evidence shows that the Carrier did not abuse its discretion when it determined that termination of Claimant was appropriate discipline for the misconduct.

Claim denied.



Patrick Crain

Carrier Member



Adam Gilmour

Organization Member



Brian Clauss

Neutral Member

Dated: December 20, 2023