

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 247

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2021-00021

Claimant: W. Tatro

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STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The dismissal imposed upon Mr. W. Tatro for alleged violation of USOR - General Rule H - Furnishing Information and Conduct was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2021-00021 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Tatro'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 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.

Claimant received a notice of investigation dated March 8, 2021:

[T]o develop the facts and to determine your responsibility, if any, in connection with an incident that occurred on February 23, 2021, on the Valley Zone, when the company gained knowledge that you had allegedly provided false or misleading information, when it was discovered that you

had been operating company vehicles without a valid driver's license and/or when you reported that you had no violations on the Certification of Violations for; and/or when your failed to timely notify the Carrier that you had received a traffic violation ; and/or when you failed to timely notify the Carrier that your driver's license had been suspended or revoked; and/or whether you violated any Company rules, regulations and/or policies in connection with the incident.

Claimant was working as a Structures Carpenter. One of the qualifications for the position was a valid driver's license. Claimant signed a Certificate of Compliance dated November 25, 2018, that provided in relevant part:

A driver must notify their immediate supervisor and the Commercial Motor Vehicle Department within 30 days of the conviction of a traffic violation (other than a parking violation). Notification must be in writing and include the driver's name, license number, date of conviction, violation details, type of the vehicle, location and signature.

On November 30, 2020, Claimant submitted an original and a corrected Commercial Motor Vehicle Driver's Certification of Violations and Annual Review of Driving Record. The DUI is not referenced in either form.

Bridge Supervisor Bush testified:

Morning of February 23rd of 2021 I had received a call from Mr. Tatro indicating that he had received an OWI and that he did not know how to handle this or how to proceed. ·

After discussion with Claimant, Mr. Bush notified Carrier Labor Relations. Claimant's Wisconsin Driving History was obtained and forwarded to Mr. Bush on February 24, 2021. That history included an earlier DUI conviction. Mr. Bush spoke with Claimant on February 25, 2021 and Claimant indicated that there was a mistake and that documentation would be forthcoming.

Mr. Bush testified that Claimant was having family issues and he granted Claimant a week off work. Claimant sent a photograph via text on March 1, 2021. The text was an Occupational License Application dated January 4, 2021. Mr. Bush indicated that an application was insufficient. On March 3, 2021, Claimant sent a copy of his Occupational Drivers License. The Occupational License was dated March 3, 2021.

On March 8, 2021, Claimant was disqualified from his Structures Carpenter position and served a Notice of Investigation. Mr. Bush issued the disqualification on advice from Carrier Labor Relations. Mr. Bush testified:

I would just like to mention that Mr. Tatro is being charged over here with falsifying his Certificate of Violation, not once but two times. Once is electronically, the other one was handwritten. I believe Mr. Tatro also violated U.S. or Rule H, Furnishing Information and Conduct. Mr. Tatro falsely stated several times to me between February 24th of 2021 and March 3rd, 2021 that he indeed had a valid occupational license. Mr. Tatro was dishonest, disloyal, and willfully falsified documents that -- and he did not notify the carrier of his violation.

Mr. Bush also testified:

Q: Mr. Bush, with the position of structures carpenter that Mr. Tatro has testified that he is -- was working during the alleged incident that's under investigation here, is he required to have a CDL?

A: No.

\* \* \* \*

Q: We don't really take much issue with anything presented here necessarily. I did want to ask you a couple of questions, though. Mr. Bush, did Mr. Tatro drive any company vehicles during the time that he allegedly did not have a license, to your knowledge?

A: I am not aware.

Q: Would you consider Mr. Tatro a good employee outside of the current situation we're here for today?

A: Absolutely.

The Carrier maintains that there is no dispute about the facts in this matter. Claimant had his driving privileges revoked following a DUI conviction. As noted during the hearing, the revocation occurred on November 20, 2020. Despite the revocation of driving privileges as part of the DUI conviction, Claimant completed two Carrier forms on November 30, 2020 and indicated that he had no convictions. The document questions are clear and Claimant chose to mislead the Carrier when initially submitting the document and also when he resubmitted a corrected document. It was not until February that Claimant notified his supervisor of the conviction. February was long past the 30-day requirement for notification.

The Organization acknowledges that Claimant is a thirteen-year employee whose supervisor agreed was a valued employee with no disciplinary history. He was mistaken about the requirements to notify the Carrier and notified the Carrier in February of his DUI. His job did not require him to drive and he never operated Carrier equipment. He obtained an Occupational License and was therefore available to operate carrier vehicles. The Carrier exceeded its authority when it terminated Claimant.

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's driving privileges were suspended on October 22, 2020 and revoked on November 10, 2020. He completed Carrier forms on November 30, 2020. The relevant notification on the form was:

Driver Requirements: Each driver shall furnish the list as required above. If the driver has not been convicted of or forfeited bond or collateral on account of any violation which must be listed, then he/she shall so certify.

The evidence also shows that Claimant was required to notify the Carrier of the conviction. Claimant notified his supervisor approximately 100 days after the revocation.

The Carrier has proven the violations. The issue is whether the discipline was an abuse of Carrier discretion. The evidence shows that Claimant was aware of his duty to notify the Carrier. The Organization maintains that Claimant may have been unaware of the duty to disclose and that Claimant was not being dishonest in his handling of the situation. The facts do not support that contention. Although Claimant notified his supervisor in late February 2021, Claimant did not disclose the matter on November 30, 2020 when he was given two opportunities to disclose. Further, when his supervisor gave him time off to attend to family matters, only then did Claimant obtain an occupational license. He obtained the license a week after the supervisor requested documentation.

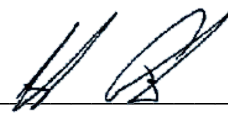
Even if Claimant was confused about the reporting requirements he had the opportunity to disclose on the November 30, 2020 Carrier forms. Claimant could have inquired about the reporting requirements when he completed the November 30, 2020 forms about violations. He chose not to include his recent DUI matter. Claimant also told his supervisor there was a mistake and only then obtained his Occupational License. Claimant was not forthright with his supervisor or the Carrier.

Claimant had a duty to report timely and to answer the questions on the November 30, 2020 document. He did neither and instead was misleading. The Carrier did not abuse its discretion by terminating Claimant.

Claim denied.



Patrick Crain  
Carrier Member



Adam Gilmour  
Organization Member



Brian Clauss  
Neutral Member

Dated: December 20, 2023