

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 284

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2018-00031

Claimant: T. Hjelsand

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The discipline (suspension) imposed upon Mr. T. Hjelsand for alleged violation of the USOR Rule I-Duty Reporting or Absence and the AMC - Attendance Guidelines issued by letter dated October 30, 2018 was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2018-00031 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Hjelsand's personal record shall now be cleared of the charges immediately and he shall be provided the remedy prescribed in Rule 31 of the Agreement.”

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 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.

On August 20, 2018, Claimant called the Carrier's Attendance Management Center "AMC" and booked off. Claimant was notified by letter dated August 24, 2018, to attend an investigation:

[T]o develop the facts and to determine your responsibility, if any, in connection with information indicating that your absence on August 20, 2018 when considered with other absences during the 12 weeks including and immediately preceding August 20, 2018 may be in violation of requirements of the Attendance Guidelines

The hearing occurred on October 23, 2018.

The record evidence adduced at the hearing revealed the undisputed facts that Claimant was in violation of USOR Rule I – Duty-Reporting or Absence and the Carrier's Attendance Guidelines. As a result of the testimony and substantial evidence adduced at the hearing, Claimant was assessed discipline 20 days actual suspension. Claimant was notified by letter, dated October 30, 2018, which provided:

The record contains credible testimony and substantial evidence proving you violated: USOR Rule I – Duty Reporting or Absence AMC – Attendance Guidelines.

In consideration of the incident, the proven rule violations, and your past discipline record, you are hereby assessed the following discipline(s): 20 Days Actual Suspension From Service (September 5, 2018 through September 24, 2018).

The Carrier maintains that there is substantial evidence in the record to show that Claimant called off work without permission or valid excuse. Claimant requested a leave and was refused. Nonetheless Claimant called off work.

The Organization maintains that although Claimant was absent on August 20, 2018, the Carrier should have granted his leave of absence request. Claimant's manager was aware that Claimant needed time off work to have his driver's license suspension removed and driving privileges reinstated. Absent the restoration of driving privileges, Claimant could not come to work.

The evidence shows that Claimant called off from work on August 3, 2018, August 13, 2018, and August 20, 2018. All days were before or after a rest day and without leave permission. Rule 23C of the Agreement provides:

RULE 23 - LEAVE OF ABSENCE

C. Employees desiring leaves of absence must obtain written permission from their Supervising Officer. All authorized leaves of absence shall be in writing and made a matter of record. The employee and the General Chairman shall be provided a copy.

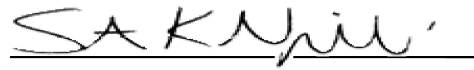
In this matter, the Carrier has provided substantial evidence that Claimant called off work without permission and before or after a rest day. Claimant requested and was denied leave. Claimant did not take any vacation or personnel time and instead called off. The Carrier has established the violation.

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 'Brian Clauss', is written over a horizontal line.

Brian Clauss

Neutral Member

Dated: December 18, 2024