

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYES DIVISION )  
IBT RAIL CONFERENCE )  
and )  
WISCONSIN CENTRAL LTD. )  
)

Case No. 35  
Award No. 35

Claimant: S. Lewein

**STATEMENT OF CLAIM:**"Claim of the System Committee of the Brotherhood that:

1. The Carrier's decision to issue Claimant S. Lewein a one hundred eighty (180) day deferred suspension and a three (3) year disqualification from holding a position as an employee in charge for violation of USOR General Rule A – Safety, USOR General Rule D – Reporting Injuries and Defects, USOR General Rule H – Furnishing Information and Conduct, USOR General Rule M – Railroad Property, LIFE U. S. Safety Rules – Section II: Core Safety Rules – Rights and Responsibilities #1 h thru i in connection with falsification of the repair record of four (4) rail defects in the TIS System was arbitrary and excessive (Carrier's File WC-BMWED-2013- 00024 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Lewein shall receive the remedy prescribed in Rule 33I of the Agreement."

**Findings:**

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. Parties to said dispute were given due notice of hearing thereon.

Claimant was notified to attend an investigation regarding possible falsification of track inspections. Following the investigation, he was assessed a 31 day actual suspension and a 180 day deferred suspension. He was also disqualified for three years from holding a supervisor position.

The Organization claims that Claimant should not have been suspended or disqualified from holding a position as an Employee in Charge. Claimant was assigned to three sections and was stretched way too thin. Claimant kept notes in a personal record to indicate whether the repairs had been made. Further, there is no provision in the Agreement that allows the Carrier to disqualify and employee from holding an Employee in Charge position.

The Carrier maintains that the evidence established not only that Claimant was aware of the requirements of his position, but also that he knowingly falsified the defects in the TIS when he removed those defects from the system. The evidence showed that the defects were removed without the repair work being performed. Regardless of whether the repairs could have been delayed, there was no valid reason to falsify the records of defect repairs. Claimant was disqualified from holding a position of Employee in Charge for a period of three (3) years because of the falsification. Further, the actual and deferred suspensions were appropriate to the proven misconduct. 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.

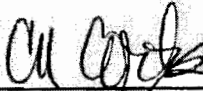
A review of the record indicates that there are no procedural defects that void the discipline. The evidence establishes that Claimant falsified repair records when he removed defects from the TIS although knowing that the repair work had not been performed. The Organization's argument that the repairs could have been delayed for at least another 30 days is irrelevant to the question of whether Claimant falsified records of repairs. The record indicates that Claimant had a substantial amount of overtime and a lot of territory. Falsifying repair records is not an appropriate way to keep up with assignments. Moreover, keeping a separate set of records does not support the Claimant's position.

Further, there was no abuse of Carrier discretion in issuing a 31 day actual and 180 days deferred suspension. As the Carrier points out, there are serious safety concerns and FRA implications to the falsifications.

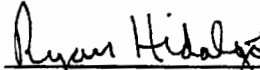
This claim is denied.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on December 31, 2016