

PUBLIC LAW BOARD NO. 7566

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

Case No. 55  
Award No. 55

Claimant: G. Luther

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

1. The Carrier's decision to suspend Claimant G. Luther from service for his alleged violation USOR General Rule A - Safety, USOR General Rule B - Reporting and Complying with Instructions, USOR General Rule C - Alert and Attentive, USOR General Rule D - Reporting Injuries and Defects and USOR General Rule M - Railroad Property in connection with its allegation Claimant was operating a CN vehicle in an unsafe manner resulting in alignment damage to the vehicle on December 22, 2012 was arbitrary, capricious and on the basis of unproven charges (Carrier's File WC- BMWED-2013-00003 WCR).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant G. Luther shall receive the remedy prescribed in Rule 33 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.

By letter dated January 1, 2013, Claimant was notified by the Carrier to attend a formal investigation in connection with its allegation that Claimant was operating a company vehicle in an unsafe manner resulting in alignment damage to the vehicle on December 22, 2012.. Claimant was subsequently assessed a 4 day actual suspension and a 5 day deferred suspension by letter dated February 1, 2013 following an investigation held January 15, 2013.

The Organization argues that the claim should be sustained because the Claimant did not receive a fair and impartial investigation because the Carrier did not produce the witnesses that were named in the notice. A Carrier official simply read statements into the record. The sole testifying witness only opined that Claimant was driving approximately 20 mph through the

yard. The witness had no knowledge of any damage to the vehicle. Further, even if there were no procedural issues, the Carrier failed to meet their burden of proof in the instant matter.

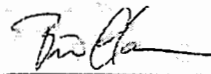
The Carrier responds that there is substantial evidence in the record of the violation through the statements of the passenger. Further, the assessed discipline was appropriate to the misconduct.

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.

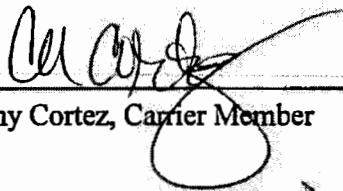
A review of the record indicates that there were three passengers in the truck that Claimant was driving on the date in question. A Carrier official read their statements into the record. He did not witness the event. One witness did appear at the hearing but had no knowledge of any damage to the vehicle – other than somebody telling him that it was out of alignment.

Based upon a review of the evidence, the record establishes that the Claimant was denied his right to a fair and impartial investigation because there was no opportunity for the Claimant to cross-examine the witnesses the Carrier relied upon in support of the charges against him. Further, Claimant had no recall of anything out of the ordinary or any incident while driving in the yard. The only witness to testify stated that Claimant was doing 20 mph in the yard and crossed the tracks while travelling too fast. He was unaware of any damage to the vehicle before the event. His only knowledge of damage was a comment by a coworker.

Claim sustained.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on December 31, 2016