

PUBLIC LAW BOARD NO. 7566

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

Case No. 61  
Award No. 61

Claimant: S. Lewein

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

1. The Carrier's decision to dismiss employee S. Lewein from service for his alleged violation of LIFE U. S. Safety Rules – Section II: Core Safety Rules – Rights and Responsibilities #1 a and h, USOR General Rule A Safety, USOR General Rule B – Reporting and Complying with Instructions, USOR General Rule H – Furnishing Information and Conduct, USOR – General Rule P – Employee Conduct in connection with an incident that occurred October 14, 2013 was arbitrary, excessive and on the basis of unproven charges (Carrier's File WC-BMWED-2013-00035 WCR).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant S. Lewein shall receive the remedy prescribed in Rule 31I 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.

The Organization claims that there were procedural defects which void the discipline because the investigation witnesses were not properly sequestered. They were discovered sitting together in a room and must have been discussing a case. Further, the Claimant did not know that he was prohibited from obtaining track authority because all of his coworkers regularly

obtained track authority and he was simply following the order of the EIC. Finally the discipline is not commensurate to the misconduct. Claimant should not be dismissed.

The Carrier maintains that the evidence established not only that Claimant was aware that he was disqualified from obtaining track authority for a period of three years, but also that he obtained a track authority for no reason other than to create an issue or to bother another Carrier employee. Further, the dismissal was commensurate with the misconduct and with Claimant's disciplinary history.

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 Carrier witnesses were sitting in the same room prior to testifying. However, there is nothing in the record to establish that they were discussing the matter under investigation. The Organization contends that they must have been discussing the instant matter, however, allegation is not evidence and conjecture is not proof.

Regarding the merits, the evidence establishes that on October 14, 2013, Claimant was part of a work group sent to Sussex, Wisconsin. Foreman Hoppe was the employee in charge of the work group. En route to Sussex, Claimant was directed by Foreman Hoppe to obtain a track authority through the computer system in order to secure on-track protection for the work group. Claimant obtained the track authority and the track repair work was performed. Upon completion of the track repair work, Claimant cleared the track authority. En route to the next location, Claimant obtained another track authority for no purpose – other than for a personal issue with another employee.

The evidence establishes Claimant's knowledge that he was prohibited from obtaining track authority. The argument that he was following the order of the EIC is not a valid defense. If he was prohibited from obtaining authority, being directed to obtain the authority did not alter that prohibition. As example: If Claimant was ordered to drive a Carrier truck but did not have a valid CDL, the order to drive the truck would not alter whether he had a valid CDL. There is substantial evidence to support the charge.


Moreover, Claimant's "order-following" defense might offer some mitigation if it were the lone matter that lead to the instant dismissal. However, en route to the next job location, Claimant obtained track authority for no purpose other than to "mess with" another Carrier employee. The Carrier rightfully does not tolerate that type of juvenile conduct when obtaining track authority.

PLB No. 7566

Case No. 61

Award No. 61

The instant violations were serious misconduct. Dismissal is not an abuse of Carrier discretion.  
This claim is denied.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on December 31, 2016