

PUBLIC LAW BOARD NO. 7566

**BROTHERHOOD OF
MAINTENANCE
OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE**

and

WISCONSIN CENTRAL LTD.

Case No. 71
Award No. 71

Claimant: T.Feldick

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

1. The Carrier's decision to suspend Claimant T. Feldick from service for alleged violation of LIFE U.S. Safety Rules Section III: Engineering Rules, Recommended Practices and PPE – 15 Lockout/Tagout, USOR General Rule A – Safety, USOR General Rule C – Alert and Attentive, CN Engineering Lock-Out Tag-Out Policy and Procedure Manual in connection with his alleged failure to use lock-out tag-out procedures while performing repairs on equipment at the Proctor, Minnesota roundhouse on May 17, 2013 was arbitrary, excessive and on the basis of unproven charges (Carrier's File WC-BMWED-2013-00027 WCR).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant T. Feldick shall receive the remedy prescribed in Rule 311 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 violation of the Carrier's Lock Out/Tag Out procedure on a yard cleaner inside a Carrier repair building. The investigation letter stated May 17, 2013 as the date of incident. An investigation was held on June 21, 2013. Claimant was assessed a 10 day actual and 10 day deferred suspension.

The Organization claims that the notice was defective because it did not properly cite the appropriate Rule violation and that the Rule was not entered. Further, the applicable Rule on Lock Out /Tag Out states that the opinion of the person placing the tag is the only relevant opinion and that "no other opinions are valid." According to the language of the Rule, Claimant cannot be cited for the infraction because he assessed the need for a tag and placed it.

The Carrier responds that its the employees' responsibility to properly tag the equipment and lock out the power at the battery. Claimant and his partner were working on two separate systems. Claimant on hoses on the motor and his partner on the brakes. Leaving the system energized posed a safety risk. Claimant was working in the engine compartment and a live electrical system could have resulted in injury.

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. Claimant was apprised of the allegations with sufficient specificity to apprise him of the incident under investigation and to prepare a defense. Further, the evidence in the instant matter indicates that Claimant and his partner were working on the yard cleaner. Each of them was performing a separate repair with Claimant working in the engine compartment and the partner working on one of the brakes. A Carrier official noticed that the tag was placed on the battery master switch. However, it was tagged in the power position and not tagged in the Off/Disconnected position. The evidence made it clear that the switch should have been tagged in the Off position otherwise the system was energized and presented a danger to Claimant working in the engine compartment. Regardless of whether Claimant was working on the electrical system, the tag should have locked out the power. It did not – it was in a Power On position. It is a Lock Out/Tag Out protocol for a reason – the power should have been locked out in the Off position.

There is substantial evidence of the Rule violation in the record. Further, the Carrier did not abuse its discretion in assessing the imposed discipline. This claim is denied.

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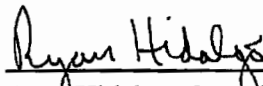
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Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on December 31, 2016