

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

WISCONSIN CENTRAL LTD.

Claimant: S. Rucks

1. The Carrier's decision to suspend Claimant S. Rucks from service for his alleged violation of USOR General Rule A – Safety, USOR – General Rule B – Reporting and Complying with Instructions, LIFE U. S. Safety Rules – Section III: Engineering Rules, Recommended Practices and PPE – E-23 Personal Protective Equipment (PPE) Charts in connection with his alleged failure to wear proper PPE while using a chainsaw on June 9, 2014 was arbitrary, excessive and on the basis of unproven charges (Carrier's File WC-BMWED-2014-00021 WCR).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant S. Rucks shall receive the remedy prescribed in Rule 31 of the Agreement."
- 3.

Claimant was notified to attend an investigation regarding possible violation for failure to wear safety equipment for a June 9, 2014 incident involving tree removal. An investigation was held on June 25, 2014. Claimant was notified by the Carrier in a letter dated June 25, 2014 of a 30 actual and 30 day deferred suspension.

The Organization claims that the Claimant was justified in not wearing the safety chaps when performing the tree removal with a chain saw. According to the Organization, the use of the chaps would have placed Claimant in personal danger of injury. He could rightfully refuse to follow an order that placed him in jeopardy. Further, even if he did commit the infraction, the discipline was excessive and not commensurate with his record or the misconduct.

The Carrier responds that it was the Claimant's responsibility to wear the required safety equipment. If Claimant believed that use of the safety equipment would have placed him in jeopardy, he should not have performed the task absent the safety equipment. Claimant disobeyed a direct order from Foreman Rogaczewski regarding use of safety equipment. This discipline was commensurate 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 are no procedural defects that void the discipline. Further, the evidence in the instant matter indicates that Claimant and Foreman Rogaczewski were working a tree removal assignment. The record establishes that Claimant knew he should be wearing the required safety equipment and had prior issues with the fit of the safety chaps.

Claimant chose to do the assigned task without the chaps. He was fully aware that he was required to wear them. The Organization claims that the chaps would have put him in danger and that the risk of harm meant he could refuse the order. That argument misapplies the rule of the Organization-cited cases. Had Claimant been told to perform a task without safety equipment, he would have been in a better position to refuse than here, where he chose to do the task without the safety equipment.

Although the violation has been proven, there is the question of the appropriateness of the discipline. A review of the record indicates that the Carrier abused its discretion by assessing a 30 day actual and 30 day deferred suspension. The appropriate discipline is a 5 day suspension.

This claim is sustained in part. Claimant's 30 day actual and 30 day deferred suspension is reduced to a 5-day suspension.

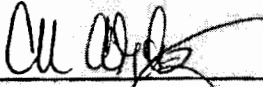
PLB No. 7566

Case No. 77

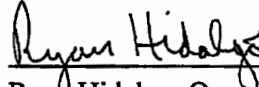
Award No. 77



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on December 31, 2016