

PUBLIC LAW BOARD NO. 7566

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

Case No. 85
Award No. 85

Claimant: T. Klang

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

1. The Carrier's decision to dismiss employee T. Klang from service for violation of USOR General Rule I - Duty Reporting or Absence in connection with his failure to report for duty on time on January 7 and 8, 2014 was arbitrary and excessive (Carrier's File WC-BMWED-2014-00020 WCR).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant Klang 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 of the investigation regarding his failure to report on May 5, 2014 to a surfacing gang assignment in a letter dated May 14, 2014. The investigation was held on May 27, 2014. Claimant was dismissed in a letter dated June 13, 2014.

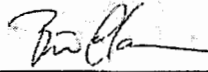
The Organization acknowledges that Claimant committed the violation that lead to the instant dismissal. The Organization continues that there are a number of factors that explain, but do not excuse, Claimant's conduct. Claimant had addressed those issues. A full discussion is provided in the Organization's submission and need not be repeated.

The Carrier responds that there is substantial evidence in the record of Claimant's Rule violation. He was aware of the 0630 start time and did not show up until 0715. Claimant admitted the Rule violation at the investigation. The Carrier continues that there was no abuse of discretion in dismissing Claimant because his disciplinary history warranted dismissal.

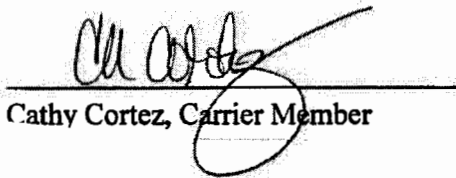
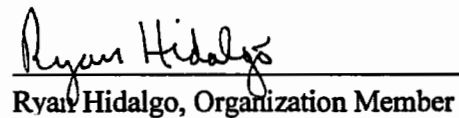
The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is 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 failed to report for the 0630 start time and that he had a disciplinary history. Claimant admitted to the Rule violation. There is a lengthy discussion of what lead to the instant violation and steps taken to ensure that the conduct will not be repeated. Based upon the unique nature of the instant matter, this Board finds that the dismissal of Claimant was not appropriate.

Based upon the unique facts of the instant claim, this Board grants the claim in part. Claimant is ordered returned to work. There is no award of backpay.



Brian Clauss, Chairman


Cathy Cortez, Carrier Member
Ryan Hidalgo, Organization Member

Signed on December 31, 2016