

PUBLIC LAW BOARD NO. 7566

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

Case No. 86
Award No. 86

Claimant: R. Wenner

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

1. The dismissal of Claimant R. Wenner for violation of USOR General Rule B- Reporting and Complying with Instructions in connection with his alleged failure to comply with instructions and failure to report to his mobile welder helper position at approximately 0700 hours on March 24, 2014 is based on unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier's File WC-BMWED-2014-00017 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Wenner's personal record shall be cleared of the charges immediately and he shall be made whole in accordance with Rule 31I of the Collective Bargaining 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 to his welding assignment. The investigation was held and Claimant was dismissed by letter dated May 9, 2014.

The Organization acknowledges that Claimant did not report, however, the fault did not lie with Claimant. Claimant did not receive proper notification about the location of the assignment. It is not the Claimant's responsibility to second guess Carrier officials when determining the location

of an assignment.

The Carrier responds that Claimant was well aware of the location of his assignment. He should have reported to his assignment and, if there was a question about his location, should have inquired of the appropriate Carrier manager or supervisor. Claimant has been with the Carrier for less than a year and a failure to report is a serious matter. r. Dismissal was appropriate and not an abuse of Carrier discretion.

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.

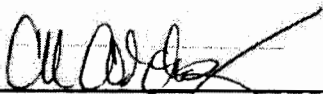
A review of the record indicates that there are no procedural defects that void the discipline. The evidence establishes that Claimant failed to report for the welding assignment.

Claimant committed the Rule violation. However, Claimant is a new employee and the circumstances of the notification of his assignment in the instant matter could have caused some confusion. This Board strongly suggests that, if Claimant thinks that he was improperly assigned, that he contact a manager or supervisor and determine the location of assignment.

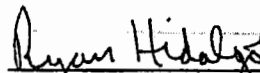
Based upon the facts of the instant claim, this Board grants the claim in part. Claimant is ordered returned to work. There is no award of backpay.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on December 31, 2016