PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Case No. 87
Award No. 87

Claimant: G. Luther

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

1. The Carrier's decision to dismiss employe G. Luther from service for his alleged violation of On-Track Safety Rules - Rule 600 - Train Approach Warning, USOR General Rule A Safety, USOR General Rule B - Reporting and Complying with Instructions, USOR General Rule C - Alert and Attentive, LIFE U. S. Safety Rules Section II: Core Safety Rules - Rights and Responsibilities #l a through i in connection with his alleged failure to devote full attention to detecting the approach of trains and warning an employe on Tuesday, March 4, 2014 in Neenah Yard was arbitrary, excessive and on the basis of unproven charges (Carrier's File WC-BMWED-2014-00015 WCR)

2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant G. Luther 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. By letter dated March 18, 2014, the Claimant was instructed to attend a formal investigation for allegedly failing to devote full attention to detecting the approach of trains and warning employee while acting as a watchman in the Neenah Yard on March 4, 2014. He was dismissed following the investigation by letter dated

April 15, 2014.

The Organization argues that the claim should be sustained because the Claimant did not receive a fair and impartial investigation because the Carrier denied a request for the video of the incident. The video would have shown what occurred and the timing of the alleged failure to timely notify of the approaching boxcar. Further, the Organization contends that the investigation lacked substantial evidence that Claimant violated Rule 600 regarding train approach warning. The Organization concludes that, even if the offense was proven, dismissal was excessive discipline. The Employee in Charge established the warning that would be used and chose not to notify the Yardmaster that they were clearing snow at night in a snowstorm. The Employee in Charge shares culpability.

The Carrier responds that eyewitness testimony established that Claimant did not warn an employee with sufficient time and also was inattentive to his watchman duties a short time later. The Carrier continues that Claimant's discipline is commensurate with the violation. Claimant's inattention came close to resulting in an injury to a coworker.

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. Based upon the evidence, there is nothing in the record to indicate that the video would have exonerated Claimant. To the contrary, the evidence established that there was a very short time between the warning and when the boxcar was upon Claimant's coworker. Moreover, Claimant's explanation of the event was that he could not see the boxcar.

Here, the evidence established that Claimant and the employee in charge were removing snow from switches in the yard. Pursuant to their job briefing, Claimant was standing near his coworker and was supposed to tap the coworker on the shoulder to notify of an approaching train. The yard speed and location of the work gave Claimant approximately 200 feet of sight.

Testimony revealed that Claimant did not warn his coworker until the approaching boxcar was less than a car length away. The coworker had to hurry to move. Further, the testimony revealed that they were a few switches further in their assignment when Claimant was looking at a lock on a warming shed. Claimant was approximately 10 feet from his coworker and was not performing his watchman duties. There is substantial evidence in the record that Claimant was inattentive to duty on two occasions a short period apart.

The instant violations were serious misconduct. In this case, dismissal was not an abuse of Carrier discretion. The claim is denied.

Brian Clauss, Chairman

Cathy Cortez, Carrier Member

Ryan Hidalgo, Organization Member

Signed on December 31, 2016