

PUBLIC LAW BOARD NO. 7599

AWARD NO. 103
CASE NO. 103

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

vs.

Grand Trunk Western Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim partially sustained

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed upon Mr. J. Myers, by letter dated June 24, 2019, in connection with the allegation that he was absent without authority and/or failed to follow call-in procedures at or near Lansing, MI on April 22, 2019, was capricious, excessive, harsh, unwarranted and in violation of the Agreement (Carrier's File GTW-BMWE-2019-00016 GTW).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Myers' personal record shall be cleared of the charges and he shall be provided the remedy prescribed in Rule 25 of the Agreement. Additionally, the Claimant shall be compensated for all lost time and have all rights and benefits restored."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was removed from service pending investigation and ultimately discharged for failing to report for work on April 22, 2019. According to his work record, at the time of the incident he had not quite three years of service with the Carrier. That record showed one previous Level 3 and one Level 2 disciplinary entry within the three year review period under the Carrier's discipline policy. For the incident, the Carrier determined claimant was guilty of being absent without authority and failing to follow call-in procedures, which violated Rules 100 and I.

According to the record, Claimant suffered an intestinal distress condition while driving to work on the date in question. The legitimacy of his illness is not disputed by the Carrier. Claimant was due to report for work for his 0730 shift start time. At 0647, he sent a text to his

foreman to say he would be late. However, he did not use his phone to inform the Carrier's Attendance Management Center (AMC) of this fact. Claimant was aware of the requirement to report attendance problems to the AMC as he had done so on three prior occasions. After his problem worsened, he turned around and did not report for work. He did not report this development to the AMC either. Claimant maintained he was not thinking straight.

Over the next several days, claimant did report for work but did not provide any explanation for his absence to the AMC or any Carrier official. He only explained the circumstances when his track supervisor called him three days later and inquired.

With one exception, to be discussed later, our review of the record does not reveal any procedural irregularities of significance.

The Carrier determined claimant's infraction warranted a Level 2 assessment. Under the Carrier's discipline policy, this assessment, when coupled with claimant's prior Level 2 and Level 3 infractions on his work record, called for discipline of dismissal. The Organization contends Level 2 was excessive discipline under the circumstances. However, even if the assessment is reduced to Level 1, the effect of his prior discipline produces that same result. Therefore, we have no proper basis for disturbing this aspect of the discipline.

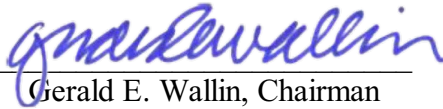
Thus we come to the one procedural exception that requires discussion. It results from the fact that claimant was withheld from service pending the conduct of the investigation. Rule 25, Section 1(a) precludes suspending an employee from service without a fair and impartial investigation. In Section 1(b), the rule permits holding an employee out of service pending an investigation when a "major offense" is involved.

The record in this matter does not support the conclusion that claimant had committed a major offense. There is no evidence that the Carrier's operation was impacted negatively in any way by claimant's absence. Moreover, the Carrier does not dispute the legitimacy of claimant's illness on the day in question. We find, therefore, that the Carrier violated the Agreement by holding claimant out of service for a relatively minor infraction.

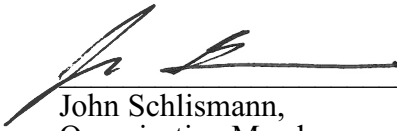
The Carrier is directed to reimburse claimant for any wages and economic benefits he lost that are attributable to the time he was improperly held out of service.

AWARD:

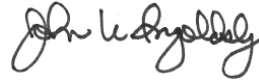
The Claim is partially sustained in accordance with the Findings. The Carrier is directed to comply with this Award within thirty (30) days of the date shown below.



Gerald E. Wallin, Chairman
and Neutral Member



John Schlismann,
Organization Member



John Ingoldsby,
Carrier Member

Date: **July 9, 2021**