

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CN – WISCONSIN CENTRAL RAILROAD**

Case No. 19

STATEMENT OF CLAIM:

Appeal of the dismissal of Claimant L.A. Martens for alleged violation of Carrier rules, policies, and/or instructions in connection with his alleged failure to report for work on November 18, 2006.

FINDINGS:

By letter dated November 28, 2006, the Claimant was notified to appear at a formal hearing and investigation to determine whether he had violated any Carrier rules, policies, and/or instructions in connection with his failure to report for work on November 18, 2006. After a postponement, the investigation was conducted on January 5, 2007. By letter dated January 22, 2007, the Claimant was notified that as a result of the hearing, he was found guilty of violating Carrier Operating Rules B, H, and I, and that as a result, the Claimant was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge the Claimant. The Carrier denied the claim.

The Carrier initially contends that the record proves that the Claimant violated the cited rules. The Carrier points out that the hearing officer found that the Claimant's testimony was contradictory and not credible. The Carrier asserts that because the Claimant's stated reasons for not reporting were not credible, these stated reasons were not considered.

The Carrier argues that the record proves that the Claimant failed to comply with his supervisor's directives to report and work. The Carrier maintains that the record is void of any credible reason to mitigate the Claimant's failure to report for work as instructed. The Carrier emphasizes that discipline is the appropriate discipline for the infractions at issue and the cited rule violations.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that neither the testimony presented at the hearing nor the Claimant's past record justifies the ultimate penalty of dismissal from service. The Organization acknowledges that there is no dispute that the Claimant did not report for overtime service on November 18, 2006, his rest day. The Organization asserts, however, that there was mitigation. The Organization points to the testimony and evidence of the failing health of the Claimant's mother, and the fact that the Claimant was responsible for her care. The Organization argues that such circumstances do not justify dismissal from service.

The Organization maintains that while the Carrier relied upon the Claimant's past record to justify the dismissal, the only alleged discipline in the Claimant's record were very minor infractions which did not result in the progressive discipline being administered. The Organization emphasizes that under these circumstances, dismissal represents excessive and undue punishment.

The Organization ultimately contends that the instant claim should be sustained in its entirety, and the Claimant should be reinstated to service with seniority and all other

rights unimpaired and with compensation for all wage loss suffered.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier instructions and policies when he failed to report for work on November 18, 2006. In his testimony at the hearing, the Claimant admitted that he knew that his work group was going to be working on the CN-UP project the weekend of November 18, 2006. The Claimant also admitted that his supervisor expected that he was going to report for work on November 18, 2006. The Claimant admitted that he did not show up for work on that date.

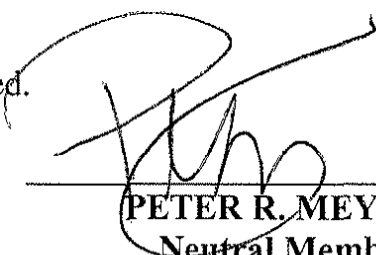
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

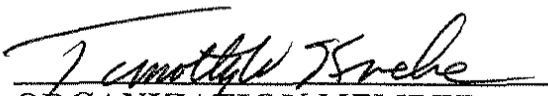
The Claimant here had been instructed to report to work with his team on November 18, 2006. By the Claimant failing to show on that day, he was guilty of a type of insubordination, i.e., failing to report for work after he had been ordered to do so. It is fundamental that insubordination and failing to follow Carrier instructions and orders are dismissible offenses, even on the first occasion. The Claimant failed to show up for work with his team when a major project was scheduled on the weekend of November 18, 2006. This Board finds that the Carrier did not act unreasonably, arbitrarily, or

capriciously when it terminated the Claimant for this insubordinate behavior. Therefore,
the claim must be denied.

AWARD:

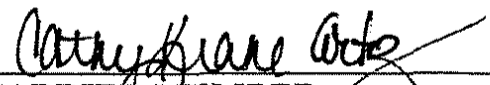
The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: Sept. 5, 2008



CARRIER MEMBER

DATED: Sept 5, 2008