

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42819
Docket No. MW-43246
17-3-NRAB-00003-150377**

The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)**

STATEMENT OF CLAIM:

“A Claim of the System Committee of the Brotherhood that:

- (1) The discipline [ten (10) day actual suspension] imposed upon Mr. A. Palencia by letter dated July 31, 2013 for alleged violation of ‘. . . General Code of Operating Rules 1.1.1- Maintaining a Safe Course; 1.1.2- Alert and Attentive; 1.6 - Conduct; CP Engineering Safety Rules B Rights and Responsibilities; CP Engineering Safety Rules - Vehicles, Equipment, and Tools.’ in connection with charges on a notice of investigation dated June 20, 2013 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D-37-13-550-06/8-00545 CMP).**
- (2) The discipline [five (5) day actual suspension] imposed upon Mr. J. Morales by letter dated July 31, 2013 for alleged violation of ‘. . . General Code of Operating Rules 1.1.1- Maintaining a Safe Course; 1.1.2- Alert and Attentive; 1.6- Conduct; CP Engineering Safety Rules B Rights and Responsibilities; CP Engineering Safety Rules - Vehicles, Equipment, and Tools.’ in connection with charges on a notice of investigation dated June 20, 2013 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement.**

- (3) As a consequence of the violation referred to in Part (1) above, Claimant A. Palencia's record shall be cleared of the charges leveled against him and he shall be compensated ' . . for all lost wages, straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare insurance, dental insurance, supplemental insurance, and any and all other benefits to which entitled, but lost as a result of Carrier's arbitrary, capricious, and excessive discipline ***.'
- (4) As a consequence of the violation referred to in Part (2) above, Claimant J. Morales' record shall be cleared of the charges leveled against him and he shall be compensated ' . . for all lost wages, straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare insurance, dental insurance, supplemental insurance, and any and all other benefits to which entitled, but lost as a result of Carrier's arbitrary, capricious, and excessive discipline ***.'"

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On June 10, 2013, the Claimants (Palencia and Morales) were performing track work and removed an S&C wire without using the proper tools and without having S&C approval and confirmation that the wire being removed was not live. By letter dated June 20, 2013 the Claimants were directed to attend an investigation to develop facts related to the events on June 10 and alleged violations of the following GCOR

rules: 1.1.1 – Maintaining a Safe Course, 1.1.2 – Alert and Attentive, 1.6 – Conduct; as well as CP Engineering Safety Rules – Rights and Responsibilities and Vehicles, Equipment and Tools. An investigation hearing was held on July 11, 2013. By letters dated July 31, 2013, the Carrier notified each Claimant he was guilty of the alleged rules violations and assessed Claimant Palencia a ten (10) day suspension and Claimant Morales a five (5) day suspension.

The Carrier asserts the Claimants acted in an unsafe manner by using improper tools to remove the S&C wire. The Organization asserts, among other defenses that the Carrier violated the Agreement when it issued its decision outside the agreed upon time limits.

The Organization made several objections to the way in which this matter was handled. The provision of the Collective Bargaining Agreement upon which the Organization relies is as follows:

Rule 18 - Discipline and Grievances

- “(a) An employee who has been in the service of the Soo Line for sixty (60) days or more, and whose application has been approved will not be disciplined or dismissed without a fair and impartial hearing and shall be advised in writing of the specific charges. This will not preclude an employee being held out of service pending a hearing for serious rules infractions. An employee who considers himself unjustly treated shall be given a fair and impartial hearing provided that the request for a hearing is made in writing to the Regional/Divisional Engineer within twenty (20) days from the date of the incident.

Employees who have satisfactorily completed probationary periods for promotion will not be disqualified from the promoted position without a fair and impartial hearing. This will not preclude an employee being removed from a position, pending final outcome of the hearing.

- (b) The hearing will be held within twenty (20) days of the date of the occurrence or within twenty (20) days from the date information is obtained by the appropriate officer of the Company (excluding company security forces) and the decision

shall be rendered within fifteen (15) days from the date the hearing is completed.” (emphasis added)

In this case the time line is clear. The investigatory hearing for both Complainants took place on July 11, 2013. The disciplinary decisions were issued by letters dated July 31, 2013, 20 days after the hearing. While the Board recognizes that unfair results can come from application of contractual time limits, it remains both the Carrier and Organization’s obligation to comply with time limits set forth in the Agreement. These kinds of rules in the Agreement are clear and unambiguous and the Board has no authority to extend or disregard them, nor can it reach the merits of claims which are out of compliance with them.

The Board finds that because the Carrier failed to issue its decision within the time frame set by the Agreement, the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 28th day of November 2017.