

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44110
Docket No. MW-44816
20-3-NRAB-00003-180106**

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

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

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (Former Missouri Pacific)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (assessed MAPS status of Training 1) imposed upon Messrs. D. Ortiz and G. Cevallos for alleged violation of Rule 136.4: On-Track Safety Procedures in connection with an incident that occurred on October 10, 2016 was based on unproven charges (System File UP951PA16/1677268D/1677269D MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Ortiz and G. Cevallos shall have their records cleared of the assessment of MAPS Training 1 and they shall each ‘... be compensated for any lost time including overtime, per/diem, and mileage due to discipline issued in connection with these charges and that they be reimbursed for any additional expenses incurred that would have normally been covered by the Carrier benefits.’”**

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.

This dispute involves the Carrier's discipline (assessed MAPS status of Training 1) of the Claimants for the alleged violation of Carrier rules. Claimants D. Ortiz and G. Cevallos were working as Machine Operators at or near Milepost 286 on October 10, 2016. By failing to contact the flagman three (3) miles in advance of MP 286.23, as was required by Form C #98033, the Claimants were allegedly in violation of Rule 136.4.

By letter dated October 17, 2016, the Carrier directed the Claimants to report for a formal investigation, alleging that the Claimants were in violation of the Carrier's on-track safety rules. On November 8, 2016, the Carrier convened a formal investigation and carried it through to conclusion.

By letters dated November 17, 2016, the Carrier informed the Claimants that they were found guilty of violating Carrier Rule 136.4: On-Track Safety Procedures and assessed a MAPS status of Training 1.

The Organization filed a timely claim on behalf of the Claimants on December 15, 2016. The Carrier denied the claim and the Organization appealed. The claim was properly handled by the Organization at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. The Board finds substantial evidence in the record to uphold the Carrier's position regarding the charges against the Claimants.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for that of the Carrier, but to rule upon whether the Carrier's actions were unjust, unreasonable or arbitrary so as to constitute an abuse of the Carrier's discretion. Absent such findings, we are not justified in disturbing the penalty.

In this case, the Claimants admitted that they did not comply with the Form C. The applicable Form C required the Claimants to contact the flagman three (3) miles in advance of MP 286.23. The Claimants failed to do so. Thus, the Carrier met its burden of proving a violation of Rule 136.4. There was no evidence presented to justify mitigating the penalty. Finally, there are no procedural errors that warrant disturbing the discipline. Accordingly, the relief sought by the Organization is denied. The MAPS 1 training status shall remain on the Claimants personal record.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 11th day of August 2020.