

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44627
Docket No. MW-45822
22-3-NRAB-00003-200150**

The Third Division consisted of the regular members and in addition Referee Paul S. Betts when award was rendered.

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

PARTIES TO DISPUTE: (

**(Union Pacific Railroad Company (former Southern Pacific
Western)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s MAPS Training 2 discipline of Mr. M. Yniguez, by letter dated August 20, 2018, on the basis that on June 27, 2018, while employed as a grinder operator, he allegedly worked at C049 in the east approach of Jurupa Road crossing without contacting signal and caused an activation failure of the crossing warning devices in violation of Rule 56.1.3: Compromising Signal System Safety, was improper and in violation of the Agreement (System File T-1845S-901/1712882 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Yniguez’s MAPS Training 2 shall be expunged from his record, with he and the Organization being provided proof that the described discipline was removed from his personal record and management owning their mistake by explaining that their actions against Mr. Yniguez were improper and assuring him that these tactics will not be utilized against him again.”**

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.

At the time of incident, June 27, 2018, the Claimant was assigned to Gang 7954 as a Grinder Operator and had approximately twenty years of service with the Carrier. By letter dated July 16, 2018, the Carrier directed the Claimant to report for a formal investigation. In relevant part, the Notice of Investigation states the following:

“...Please report to Holiday Inn Diamond Bar, 21725 E. Gateway Center Dr Diamond Bar, CA at 10:00 hours on 08/01/2018 for the hearing to develop the facts and determine your responsibility, if any, in connection with the below charge.

On 06/27/2018, at the location of Riverside, CA, near Milepost 48.95, Los Angeles Subdivision, at approximately 14:30 hours, while employed as a Grinder Oper, you allegedly worked at C049 in the east approach of Jurupa Rd crossing without contacting signal and caused activation failure of the crossing warning devices. This is a possible violation of the following rule(s) and/or policy:

56.1.3: Compromising Signal System Safety

Under the MAPS Policy, this violation is a Critical event. Based upon your current status, if you are found to be in violation of this alleged charge, Training 2 may result...”

Rule 56.1.3: Compromising Signal System Safety states the following:

“Employees must not perform work may:

- Cause improper proceed signal indications.

- Cause activation failures of crossing warning systems.
or
- Defeat signal locking circuits.”

The investigative hearing was conducted on August 1, 2018. By letter dated August 20, 2018, the Carrier informed the Claimant that he was found guilty as charged and assessed the Claimant MAPS Training 2. The Organization filed a claim on behalf of the Claimant on October 16, 2018, which was denied by the Carrier on November 30, 2018. Thereafter, the claim was handled in the usual manner and now comes before this Board for final adjudication.

In summary, the Carrier argues a) the Claimant’s violation of Rule 56.1.3 was proven by substantial evidence, b) the Claimant received a fair and impartial hearing with no prejudicial violations, and c) the assessed MAPS 2 training was both warranted and commensurate with the critical rule violation.

In summary, the Organization argues a) the Carrier failed to meet its burden of proof, as the record does not establish the Claimant violated the cited rules. Here the Claimant was working well over 4,000 feet from the affected crossing, and Rule 137.2.3 only requires the Claimant to contact the Signal Department if working within 3,500 of the crossing. Furthermore, the Claimant was notified in the morning job briefing where he was going to work. Because the Claimant was notified only a few hours prior to the work being performed, it was impossible for him to notify the Signal Department 24 hours in advance as required by the rule. It was the Manager’s responsibility to contact the Signal Department for the planned work, as the Manager was the only employee who had foreknowledge of the work, b) the discipline imposed by the Carrier was arbitrary and unwarranted, and c) the Claimant has twenty years of service with no disciplinary record. The long tenure and clean record of the Claimant was not taken into consideration by the Carrier when assessing disciplinary action.

The Organization argues that it was the Claimant’s Manager, not the Claimant, who was responsible for contacting the Signal department. They argue that the Manager was the only employee who had foreknowledge as to where the Claimant would be working on the date of incident, and the only employee who would have been able to provide 24 hours advance notice. Furthermore, the Organization argues that the Claimant was not required to contact the Signal department based upon the distance he was from the crossing, referencing Rule 137.2.3.

After a thorough review of the record, the Board finds the Carrier provided substantial evidence to support the charge. Here, the record reveals that the Claimant had been working in the area since June 25, 2018, two days prior to the incident date of June 27, 2018, and knew he would be working at that location during the work week. Furthermore, although the Organization references Rule 137.2.3 as a basis for relieving the Claimant of his responsibility in contacting the Signal Department prior to performing the welding operation, the rule itself is not found in the record. The record is void the written rule. Furthermore, the Claimant was not charged with violating Rule 137.2.3.

The Board finds that the proximate cause of the activation failure was the welding work performed by the Claimant. The Claimant was removing a joint bar that fastened two rail ends together. Once the joint bar was removed, the continuity between the rails was lost, thereby causing the crossing warning system to drop the gates at the Jurupa road crossing. The Claimant performed the work that triggered the activation failure, and the Claimant did not notify the Signal Department of the work he was performing.

Once the Board has determined that there is sufficient evidence to support its finding, the Board must review the discipline imposed. The Board will not set aside the Carrier's imposed discipline unless we find it to be unreasonable, arbitrary, or capricious.

The Claimant here is a twenty-year employee, and the record reveals an absence of any disciplinary action during this twenty-year career. Furthermore, the Board notes that the MAPS Training 2 the Claimant received for this incident, although still part of his personnel record, has dropped off his disciplinary status. Taking all these factors into consideration, the Board sustains the claim but only as it relates to removing the MAPS Training 2 from his record. As a result, the Carrier is to expunge the MAPS Training 2 from the Claimant's record.

Although the Board may not have repeated every item of documentary evidence nor all the arguments presented in the record, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD

Claim sustained in accordance with the Findings.

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 15th day of December 2021.