

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44628
Docket No. MW-46002
22-3-NRAB-00003-200632**

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s MAPS Training 1 discipline of Mr. S. North, by letter dated March 6, 2019, on the basis that on January 15, 2019, while employed as a sectionman, he allegedly hy-railed with gang down lead that was not part of the job briefing with the yardmaster in violation of On Track Safety Rule 136.3: Job Briefings, was improper and in violation of the Agreement (System File A-1948U-004/1719761 UPS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. North’s MAPS Training 1 must be immediately rescinded and permanently removed from his employment record.”**

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 January 15, 2019, the Claimant was working as a Sectionman assigned to Gang 4754 in the Council Bluffs Yard and had 18 years of service with the Carrier. During a job briefing with the Yardmaster, the Gang received specific route instructions on traveling in the east yard lead. The Gang was hy-railing in reverse to the east yard lead when they passed the east yard lead switch and incorrectly travelled into the west yard lead. The Claimant was a member of the work group and present in the work truck when they hy-railed beyond the limits of their job briefing, thereby allegedly violating Rule 136.3 – Job Briefings, which states “A job briefing must be conducted before a roadway worker fouls any track. A job briefing is complete only when each roadway worker acknowledges understanding of the On-Track Safety procedures and instructions.”

The Foreman and Truck operator recognized their culpability for the incident, admitted fault, and elected to sign waiver forms, which required that they partake in a MAPS Conference in lieu of MAPS 1 Training. The Claimant, who believed he was not at fault for the incident, refused the waiver and MAPS Conference and instead, elected to go to hearing.

A hearing over the matter was held on February 14, 2019. By letter dated March 6, 2019, the Carrier found the Claimant in violation of Rule 136.3 and assessed MAPS 1 Training. The Organization filed a claim on behalf of the Claimant on March 21, 2019, which was denied by the Carrier on May 17, 2019. Thereafter, the claim was handled in the usual manner and now comes before this Board for final adjudication.

In summary, the Carrier argues a) Claimant’s violation of Rule 136.3 was proven by substantial evidence, b) the Claimant received a fair and impartial hearing with no prejudicial violations, and c) the assessed MAPS 1 training was both warranted and commensurate with the critical rule violation.

In summary, the Organization argues a) the Claimant was denied his right to a fair and impartial hearing, b) the Carrier failed to meet its burden of proof, and c) the discipline was arbitrary and unwarranted.

After a through review of the record, the Board finds the Carrier failed to provide substantial evidence to support the charge. The Carrier argues culpability for the violation is equally shared by all members of the work group, however, the Board rejects this notion given the record here.

Evidence and testimony reveal that the proximate cause of the incident involved an incorrectly aligned switch and the subsequent hy-railing of the truck onto the wrong west yard lead track. The Claimant was neither the individual who incorrectly aligned the switch, nor the individual driving the truck onto the wrong track. The Claimant was sitting in the back seat of the truck, as it traversed in reverse motion, when the truck entered the wrong track. Furthermore, the record reveals that the Claimant was not familiar with the yard.

Based on the above, the Board finds the Carrier lacked substantial evidence to support the charge. As a result, the claim is sustained.

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

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 15th day of December 2021.