

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7426
AWARD NO. 18, (Case No. 18)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

vs

UNION PACIFIC RAILROAD COMPANY (SPWL)

William R. Miller, Chairman & Neutral Member
T. W. Kreke, Employee Member
P. Jeyaram, Carrier Member

Hearing Date: January 18, 2012

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- 1. The Level 3 discipline imposed upon Truck Driver M. D. Campbell for violation of General Code of Operating Rule 74.3 (Driver Responsibility) and Rule 1.13 (Reporting and Complying with Instructions) in connection with his alleged failure to make repairs to his trailer regarding the 90-Day BIT inspection, disregarding instructions for reporting damages, repairs and overtime in April, 2010 is based on unproven charges, unjust, unwarranted, excessive and in violation of the Agreement (System File L-1045S-456/1542254D).**
- 2. As a consequence of the violation referenced in Part 1 above, Mr. Campbell shall have the discipline expunged from his personal record and shall be compensated for any and all wages lost, straight time and overtime, as well as any and all benefit loss suffered by him resulting from his five (5) day training class."**

FINDINGS:

Public Law Board No. 7426, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On May 17, 2010, Carrier notified Claimant to appear for a formal Investigation on June 4, 2010, which was mutually postponed until June 15, 2010, concerning in pertinent part the following charge:

"...to develop the facts and place responsibility, if any, that while employed as MofW Truck Driver on Gang 7591, at Citrus Heights, California, near Milepost

104, in April, 2010, you allegedly failed to make repairs to your trailer regarding your 90-Day BIT, disregarding instructions for reporting damages, repairs and overtime.

These allegations, if substantiated, would constitute a violation of Rule 74.3 (Driver Responsibility), and Rule 1.13 (Reporting and Complying with Instructions), as contained in the General Code of Operating Rules, effective April 3, 2005, the System Special Instructions, effective June 22, 2009, and the Safety Rules, effective July 30, 2007."

On July 6, 2010, Claimant was notified that he had been found guilty as charged and was assessed a Level 3 discipline and because he had a previous Level 3 discipline on his record that equated to a Level 4 pursuant to the Carrier's Discipline Policy which required Claimant to participate in a five day training class, with pay, beginning July 6, 2010, through July 12, 2010.

The facts indicate Claimant was assigned to a semi-truck which hauls materials and equipment to and from various points throughout the system. His headquarters, is a staging location for material to be delivered and then redistributed by truck to outlying areas and at the time of the incident he was assigned Trailer 4047T. The trailer underwent a BIT inspection on April 12, 2010, and the Claimant was aware that the tires had bald spots. The inspection determined the need to replace the tires to the trailer. After that inspection the Claimant used the trailer for hauling purposes on April 21st and 22nd to Caliente, Nevada, a roundtrip of approximately 1400 miles. The record further shows that Claimant had the tires on the trailer replaced on May 4, 2010, and during his aforementioned trip to Caliente he worked overtime.

It is the position of the Organization that the Notice of Investigation was woefully deficient as it lacked specificity making it so vague that it denied the Claimant the right to a "fair and impartial" Hearing, and on that basis alone the discipline should be set aside without even reviewing the merits. It argued that the testimony makes it clear that the instructions regarding damages or repairs shows that there is no evidence that the Claimant improperly authorized any repairs on Trailer 4047T and the evidence substantiated that the overtime was authorized by Supervisor Russo before the Claimant left for the trip to Caliente, Nevada, and his telephone records stand as proof that he called in nightly to report his overtime with no complaint from the Carrier. It concluded by requesting that the discipline be rescinded and the claim sustained as presented because the Carrier did not meet its burden of proof.

It is the Carrier's position that there is no merit to the Organization's argument that Claimant was denied a "fair and impartial" Hearing as the record shows there was no misconduct in the hearing processes or procedures that prejudiced Claimant or prevented him from receiving a fair Hearing. Turning to the merits the Carrier argued that the record contains substantial evidence to support a finding of guilt as it clearly established that Claimant knew of the poor

condition of the tires, yet did not take steps to correctly address the issue in a timely manner. Furthermore, the evidence proves that Claimant did not obtain the required authorization to replace the tires or perform overtime as required. Lastly, it argued that the discipline was in accordance with the Carrier's UPGRADE Discipline Policy. It closed by asking that the claim remain denied.

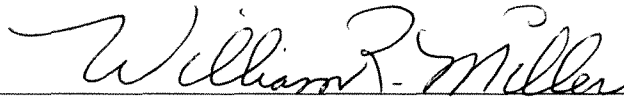
The Board has thoroughly reviewed the record and will address the Organization's argument that the Notice of Investigation was vague and did not provide the Claimant with adequate notice of the charges against him to prepare for the Hearing. The Notice reveals that the Claimant was apprised in writing of the precise charges and it was given to him sufficiently in advance of the Hearing to afford a reasonable opportunity to prepare a defense. Additionally, the transcript indicates that the Claimant was well represented and both he and the Organization understood the charges. The Board has determined that the Hearing was "fair and impartial" and Claimant was afforded his Agreement "due process" rights.

The record substantiated that the Claimant did not fulfill his responsibilities as a Truck Driver when he did not address the replacement of trailer 4047 tires in a timely manner despite the fact he understood they were a safety issue and the BIT report required an immediate replacement. The facts further support a finding that Claimant did not obtain authorization from his immediate Supervisor, Ms. Russo, which he should have done, prior to changing out the tires on May 4, 2010, but instead chose to discuss the matter with a different individual. The Board has determined that the Carrier met its burden of proof that the Claimant failed to meet his responsibility in the replacement of the trailer tires in a prompt fashion, however, the Board is not persuaded that he failed to obtain authorization prior to incurring overtime on April 21 and 22, 2010, as there is an irreconcilable dispute in facts as to whether or not he secured such before traveling to Caliente, Nevada.

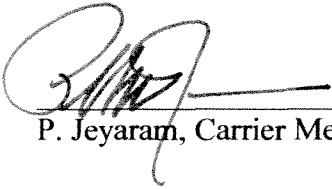
The only issue remaining is whether the discipline was appropriate. At the time of the dispute the Claimant was a short term employee who was hired on July 1, 2008. Within his brief tenure Claimant had been charged with failing to comply with instructions on two prior occasions including one of which was addressed by this Board in its denial of Award No. 13. The Board cannot find that the Carrier erred in its discipline as it was not arbitrary, excessive or capricious, but instead was corrective in nature and in accordance with the Carrier's UPGRADE Policy. The discipline will not be set aside and the claim will remain denied.

AWARD

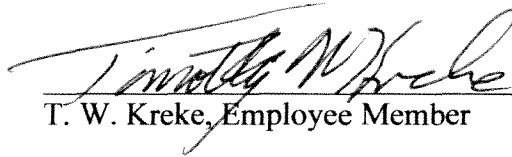
Claim denied.



William R. Miller, Chairman



P. Jeyaram, Carrier Member



T. W. Kreke, Employee Member

Award Date: April 16, 2012