

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

(1) The decision rendered in the discipline case involving Section Foreman C. W. Sanchez by Mr. C. O. Malone, i.e., someone other than Hearing Officer R. N. Hamilton, is inappropriate and/or invalid.

(2) The discipline assessed Mr. Sanchez (30 days deferred suspension) for alleged violation of company rules as indicated in Mr. Malone's letter of September 14, 1992, without the benefit of identifying or analyzing the possible application of those rules at the investigation, is inappropriate and invalid as well.

(3) The discipline referred to under (2) or any discipline assessed in this regard is arbitrary, capricious and totally unwarranted.

(4) Because of (1), (2) and (3) above, the discipline referred to herein must be cancelled and any mention of this matter must be removed from Mr. Sanchez' personal discipline record.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in Cheyenne, Wyoming on July 20, 1992 to develop the facts and place the responsibility, if any, in connection with the alleged report that on June 29, 1992 at approximately 3:00 p.m. while he was employed as Section Foreman at MP 605, he sustained a personal injury, indicating possible violations of Maintenance of Way Rules, Block, Signal, Cab Signal and Interlocking Rules effective November 1, 1991 or instructions as issued by proper authority.

The investigation was postponed and was then held on August 27, 1992.

The Board has read the transcript of the investigation and has studied all of the allegations of the parties herein.

Rule 48(c) states:

"Prior to the hearing, the employee alleged to be at fault shall be apprised in writing of the precise nature of the charge(s) sufficiently in advance of the time set for the

hearing to allow reasonable opportunity to secure a representative of his choice and the presence of necessary witnesses. . ."

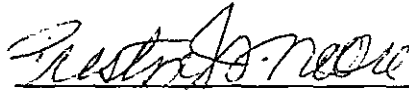
The Notice of Investigation dated July 3, 1992 simply states: ". . . possible violation of Maintenance of Way Rules, Block Signal, Cab Signal and Interlocking Rules effective November 1, 1991 or instructions as issued by proper authority."


Although the date of this letter apparently should have been July 6, and there is another notice of formal investigation of that date, which is recognized as being the appropriate notice. However, the notice dated July 6 is no more precise than the one dated July 3, 1992. The notice therein is imprecise and does not comply with Rule 48(c).

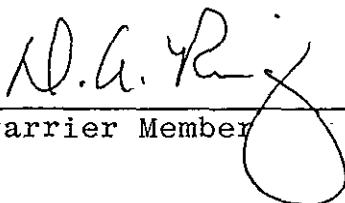
For that reason the Carrier is directed to get the discipline aside and all remarks regarding this incident will be removed from the claimant's personal record.

AWARD: Claim sustained.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.


Preston J. Moore, Chairman


Union Member


Carrier Member