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BEFORE PUBLIC LAW BOARD NO. 5839

AUG 19 1996

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES** B. M. W. E.  
**and**  
**UNION PACIFIC RAILROAD COMPANY**  
(Former Oklahoma-Kansas-Texas Railroad)

Case No. 9

**STATEMENT OF CLAIM:**

1. The Level 2 Discipline assessed M. W. Crossley, SSN 462--02-1220, for his alleged failure to comply with instructions on May 19, 1994 and for his alleged absenteeism without authority on May 24, 25, 17, 31 and June 1 and 2, 1994, was unwarranted, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement.

2. As a consequence of the violation referred to in Part (1) above, all charges shall be removed from the Claimant's personal record.

**FINDINGS:**

On May 19, 1994, while assigned to Gang 9168, the Claimant bid to Gang 8902. Claimant's bid was granted; however, he was not released by his track supervisor from Gang 9168.

On May 24, 1994, the Claimant allegedly disregarded his track supervisor's instructions and went to work with his new gang. He was subsequently charged with being absent without authority from his assignment on Gang 9168.

A formal investigation was held and it was determined that the Claimant was guilty as charged. He was assessed a level 2 discipline. The discipline was appealed by the Claimant and the matter was further progressed through the grievance procedure.

The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to comply with instructions to remain with his gang and not to go on to his new assignment. The Carrier presented testimony from two supervisors both of whom testified that the Claimant was clearly advised that he was being held on his old assignment. Both witnesses testified that the Claimant was told to remain in his old position until he was released by Supervisor Epperson.

The Organization argues that there was some confusion regarding the Claimant's assignment and that the Claimant was, therefore, not failing to comply with instructions. However, we find that there is simply no evidence of that confusion in the record.

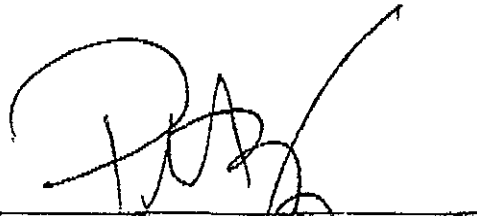
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The record reveals that the Claimant was issued a Level II discipline which required an alternative assignment for one day in which the Claimant was required to review the Union Pacific Railroad Safety Rules and develop a corrective action plan with his supervisor. Given the seriousness of the violation, and the leniency of the eventual penalty, this Board cannot find that the Carrier's action in this case was unreasonable,

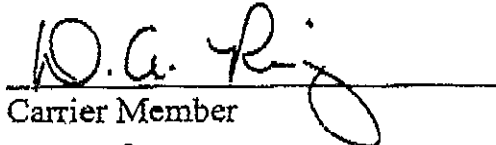
arbitrary, or capricious. Therefore, the claim will be denied.

**AWARD**

Claim denied.



PETER R. MEYERS  
Neutral Member

  
Carrier Member

DATED: July 25, 1996

  
Organization Member

DATED: 7-29-96