

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 153
UNION PACIFIC RAILROAD COMPANY) Award No. 148
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: June 18, 2008

STATEMENT OF CLAIM:

- (1) The thirty (30) day suspension imposed upon Foreman Jesus Salinas for alleged failure to clear train UP 5303 West through the Form B No. 34264 on November 29, 2006 is unjust, unwarranted and in violation of the Agreement (System File J-0748U-255/1474208).
- (2) As a consequence of the violation outlined in Part (1) above, we request the dropping of all charges against Mr. Salinas, that he be compensated for all lost time and his qualifications as Group 8, Wyoming Division Foreman must be immediately reinstated. Mr. Salinas must also be compensated for any loss in compensation between the position he is filling and the foreman's position he was unjustly disqualified from.

FINDINGS:

Public Law Board No. 6302 upon the whole record and all of 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 December 1, 2006, Carrier notified Claimant that he allegedly failed to properly clear UP 5303 West through Form B No. 34264 on November 29, 2006. The notice offered Claimant discipline at UPGRADE Level 4 and the option of accepting that discipline or exercising his right to a formal hearing. Claimant did not accept the proposed discipline. Consequently, on December 18, 2006, Carrier notified Claimant to report for an investigation on December 27,

2006. The hearing was postponed to and held on January 5, 2007. On January 27, 2007, Carrier notified Claimant that he had been found guilty of the charge and assessed discipline at UPGRADE Level 4, a thirty-day suspension.

The Organization contends that the notice failed to advise Claimant of the precise nature of the charge. We disagree. The notice charged, "While working on Gang 5330 as a track Patrol Foreman on November 29, 2006, between 1100 and 1230 hours in the vicinity of MP 683 on the Rawlings Subdivision, you allegedly failed to properly clear the UP 5303 West through the Form B No. 32464." The notice clearly contained sufficient specificity to enable Claimant to prepare his defense. We find no procedural violation of the Agreement.

The record reflects that Claimant was working as Employee-in-Charge and thus was responsible for clearing trains through the relevant Form B. On November 28, 2006, a train proceeded down the wrong track. When the Manager Track Maintenance investigated the incident, he found that Claimant's paperwork showed that Claimant had cleared the train on the correct track but the train crew's paperwork showed otherwise. Unable to resolve the difference, management decided to subject Claimant to an efficiency test the following day.

On November 29, 2006, two Managers Operating Practices rode a train to the Form B. They requested clearance on track one. Claimant cleared them on track one but one MOP deliberately repeated Claimant's clearance incorrectly, acknowledging clearance on track two. Claimant responded that the MOP had repeated the clearance correctly. Shortly thereafter, the MOPs advised Claimant that this was incorrect and that he had failed the efficiency test. Claimant acknowledged his mistake. There is no question that Carrier proved the charge by substantial evidence.

The Organization attacks the assessment of a thirty-day suspension. Our role, however, is not to decide whether we would have imposed the same penalty as Carrier assessed. We may only disturb the penalty if it is arbitrary, capricious or excessive. We recognize that Claimant had approximately 34 years of service at the time of the incident. The incident itself, however, was a very serious rule violation and could have resulted in serious injury, death or damage to property. The penalty was in keeping with Carrier's UPGRADE policy. We cannot say that it was arbitrary, capricious or excessive.

AWARD

Claim denied.



Martin H. Malin, Chairman



D. A. Ring
Carrier Member



T. W. Kreke, Employee Member
Employee Member

Nov 23, 2008

Dated at Chicago, Illinois, November 8, 2008