

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 155
UNION PACIFIC RAILROAD COMPANY) Award No. 150
_____)

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

Hearing Date: March 23, 2009

STATEMENT OF CLAIM:

- (1) The discipline (Level 3) imposed upon Foreman Justin L. Houghton in connection with running across a patch of ice and sliding while crossing the parking lot of the office on March 1, 2007, is unjust, unwarranted and in violation of the Agreement (System File D-07-37D/1481629).
- (2) As a consequence of Part 1 above, we request that this Level 3 discipline be rescinded and completely expunged from the Claimant's personnel records.

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 March 7, 2007, Carrier charged Claimant with allegedly running across a patch of ice and sliding while crossing the office parking lot on March 1, 2007, and offered him the option of exercising his right to a hearing or waiving hearing and accepting discipline at UPGRADE Level 3. Claimant exercised his right to a formal hearing. On March 23, 2007, Carrier notified Claimant to report for a formal investigation on March 30, 2007. The hearing was postponed to and held on April 24, 2007. On May 2, 2007, Carrier notified Claimant that he had been found guilty of the charge and assessed discipline at UPGRADE Level 3, one day's training without pay.

Two witnesses testified at the hearing: the Manager Track Maintenance and Claimant. There was no dispute that on the date in question, Claimant was running late. To avoid missing the morning briefing, Claimant parked his car temporarily near the entrance to the building and moved quickly across an icy parking lot to the office where the gang was assembling. The MTM testified that he observed Claimant run and then slide across a sheet of ice, rather than walk on ice-free pavement. Claimant denied running or sliding across the ice and maintained that the entire parking lot was a sheet of ice, i.e. that there was no ice-free pavement on which he could have walked.

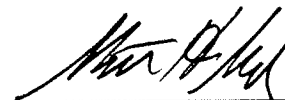
Carrier contends that the case comes down to a conflict in credibility between Claimant and the MTM and that, as an appellate body, we must defer to the credibility determinations made on the property. The Organization maintains that the only evidence against Claimant is the MTM's testimony, that Claimant denied the allegations in his testimony and that under such circumstances, Carrier may not rely on the uncorroborated testimony of a single witness to carry its burden of proof.

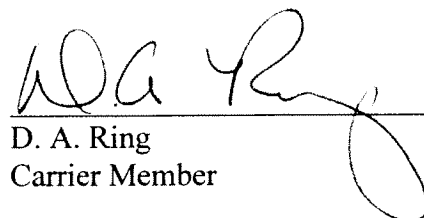
Although no other witnesses testified in support of the MTM or Claimant, we cannot say that the MTM's testimony was not corroborated. First, we find corroboration in the MTM's actions. Immediately after concluding the morning briefing, the MTM instructed Claimant to remain and advised him that he had observed him run and slide across the ice which was a cardinal safety rule violation. The MTM's contemporaneous actions corroborate his testimony as to his observation. Furthermore, although Claimant denied running and sliding, he did admit that he was concerned with being late, that he wanted to show the MTM "some initiative" and that he "was walking faster than a walk on the ice."

Considering the record as a whole, we conclude that a reasonable trier of fact could credit the MTM's version of events over Claimant's. Accordingly, we hold that Carrier proved the charge by substantial evidence. The penalty imposed was in keeping with Carrier's UPGRADE Policy and was not arbitrary, capricious or excessive.

AWARD

Claim denied.


Martin H. Malin, Chairman


D. A. Ring
Carrier Member


T. W. Kreke
Employee Member
June 23, 2009

Dated at Chicago, Illinois, June 23, 2009