

PUBLIC LAW BOARD 6302

NMB NO. 176
AWARD NO. 162

PARTIES TO DISPUTE

CARRIER

Union Pacific Railroad

AND

ORGANIZATION

Brotherhood of Maintenance of Way Employees
Division of International Brotherhood of Teamsters

Carrier's File

1510302

System File

J-0848U-266

STATEMENT OF CLAIM

1. In violation of Rule 48 of the July 1, 2001 Collective Bargaining Agreement, Carrier assessed System Laborer, Richard C. Nunez, herein Claimant, an eighty (80) hour suspension as a result of imposing a Level 3 discipline measure but administered at a discipline measure of Level 4, to be served between July 24, 2008 and July 31, 2008, for violation of General Code of Operating Rules (GCOR), Rule 1.15 in connection with reporting for duty at North Platte, Nebraska instead of Gothenburg, Nebraska on May 26, 2008.¹
2. As a consequence of Carrier's violation as set forth in Point 1 above, the Organization requests that all charges against Claimant be dropped, that the incident that resulted in his suspension be removed from his personnel record and, that he be compensated at the straight time rate including any overtime for all hours he would have worked had he not been suspended.

STATEMENT OF BACKGROUND

The Background regarding the circumstances of this case is identical to the Background as detailed in Case 161 and therefore, is incorporated as if fully reproduced herein.

¹ The Board takes judicial notice of the fact that subsequent to the imposition of this disciplinary action, effective January 14, 2009 by Decree of the District Court of Lincoln County, Nebraska (Case No. CI08-760), Claimant legally changed his name from Richard Charles Nunez to Richard Charles Hemmerling. However, since Claimant's name change took effect after-the-fact of his being disciplined, for the purposes of this proceeding, the Board reference to Claimant shall be a reference to him when his name was Richard Charles Nunez.

FINDINGS

Public Law Board No. 6302, 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.

In Case No. 161, this Board found that Claimant's account of how he happened to report for work the morning of May 25, 2008, at North Platte, Nebraska instead of the assembly point of Kearney, Nebraska was, in essence, more credible an explanation than the account proffered by Supervisor Gayman. However, the Board is of the view that, even though he was permitted to work that day on a gang he was not assigned to, when he observed at the very beginning of the shift that he was the only member of his gang present to work at the North Platte location, it was incumbent upon him to take affirmative action to call Supervisor Gayman to discuss what apparently was a mistake in his having reported to the North Platte location. Claimant however was derelict in his obligation to divine what was obviously amiss and to clarify whether or not he should remain at North Platte for the following day, May 26, 2008, rather than taking for granted he should just report to work at North Platte on that second day. While Claimant could be excused for having reported to work at North Platte the first day, May 25, 2008 under all the prevailing circumstances, the Board can find no reason to excuse the Claimant for reporting to work at North Platte on May 26, 2008 under all the prevailing circumstances.

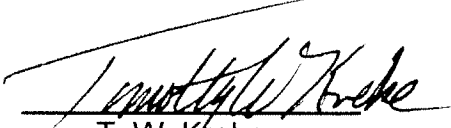
Accordingly, the Board rules to deny the subject claim in its entirety.

A W A R D

Claim Denied In Its Entirety


George Edward Larney
Neutral Member & Chairman


D. A. Ring
Carrier Member


T. W. Kreke
Employee Member

Chicago, Illinois

Date: March 3, 2010