

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD 6302

NMB NO. 165

AWARD NO. 163

PARTIES TO DISPUTE

CARRIER

Union Pacific Railroad

AND

ORGANIZATION

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

Carrier's File

1498813

System File

J-0848U-252

STATEMENT OF CLAIM

1. The Carrier violated Rule 48 of the Collective Bargaining Agreement effective July 1, 2001 when on December 5, 2007, Claimant, Arc Welder Helper Richard C. Nunez was assessed a Level 3 five (5) work day suspension without pay pursuant to Carrier's discipline policy (UPGRADE), to be served between December 5, 2007 and December 12, 2007 in connection with his failure to get a proper/complete job briefing before work commenced on November 3, 2007 in violation of General Code of Operating Rules (GCOR) Rule 70.3 effective April 3, 2005, and in Safety Rules effective July 30, 2007.¹

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 any mention of this incident be expunged from his personal record, and that he be compensated for all time lost as a result of being unjustly withheld from service.

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. C108-760**), 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 assessed the subject disciplinary suspension, for the purpose of this proceeding, the Board reference to Claimant shall be a reference to him when his name was Richard Charles Nunez.

STATEMENT OF BACKGROUND

At the time the incident occurred that resulted in Carrier suspending Claimant without pay, Claimant was assigned and working as a welder helper on Gang 4876 along with welder, D.B. Georgius at North Platte, Nebraska. It is undisputed that on Friday, November 2, 2007, Claimant was informed that Foreman M. G. Deidel would require the services of a welder and welder helper for overtime service the following day, Saturday November 3, 2007. Having been so informed, Claimant anticipated, as this was his territory that he would be called to perform the overtime service. Notwithstanding the fact of not being called, Claimant of his own volition reported to the tool house ready to work if needed. Upon his arrival at the tool house, Claimant commenced performing work, beginning with his usual routine vehicle inspection and operation of the welding truck and recording the results of said inspection in his vehicle log book. About one (1) hour later, Claimant learned that Welder Georgius had been called to work on overtime in an adjacent welder's territory along with the welder helper assigned to that territory. Having learned that neither Georgius nor Foreman Deidel would require his services, Claimant proceeded to leave work and return home. Although Claimant did not request compensation for the day, Georgius submitted three (3) hours of pay for Claimant.

On date of November 9, 2007 Carrier notified Claimant he was to report for an investigation to be held November 15, 2007 pertaining to his alleged failure to get a job briefing before commencing performing work at 7:00am on Saturday, November 3, 2007. That investigation was postponed and held a week later on November 21, 2007 conducted by G.A. Peterson, Manager Track Projects. At the investigation, it was noted that a job briefing is a requirement that needs to occur prior to a Maintenance of Way employee commencing work and that such a job briefing entails a supervisor or foreman or employee-in-charge apprising of the work that needs to be performed, of any hazards involved in performing the job and any tools or equipment needed at the job site to accomplish the work. It was further noted that the underlying rationale for conducting a job briefing is to insure the safest work environment possible for each and every employee.

The Organization submits that on procedural grounds alone the subject claim should be sustained asserting that the Notice of Charges issued by Carrier against Claimant was not sufficiently precise so as to be able to prepare a defense. The Organization argues that the task Claimant performed in the one (1) hour he was at the work site of inspection and operation of the welding truck and recording the results of such inspection in the log book is so routine, that it is performed either before or after a job briefing occurs. In any event, the Organization asserts that the task of inspection and operation of the welding truck does not constitute work as such that would be covered by a job briefing. As evidence of this, the Organization notes that Claimant did not submit at any time either before he left the work site or thereafter a claim for overtime pay for work performed. Additionally, the Organization maintains that the Carrier failed

to identify the person that would have been responsible under the prevailing circumstances for giving Claimant the proper job briefing.

The Carrier argues that the Organization's asserted claim the Notice of Charges was imprecise and therefore an impediment in preparing its defense is nothing more than a pure obfuscation of reality meant to deflect and distract from the offense committed by Claimant. Carrier points to Claimant's admission at the investigation that performing a pre-trip or post trip inspection of the welding truck constitutes work that is covered by a job briefing, as substantial evidence, under all the prevailing circumstances, in support of having assessed Claimant a Level 3 suspension without pay.

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.

As to the procedural objection raised by the Organization that the charge against Claimant made by Carrier was imprecise and therefore served as an impediment in defending Claimant, the Board finds this objection to be wholly fallacious upon a straightforward reading of the charge which in pertinent part states the following:

Please report to . . . for investigation and hearing on charges to develop the facts and place responsibility, if any, that while employed as a Arc Welder Helper, on Gang No. 4876 . . . on November 3, 2007 you allegedly failed to get a job briefing before work began.

Your alleged actions indicate possible violation of Rule 70.3 (Job Briefing) as contained in the General Code of Operating Rules, effective April 3, 2005 and in the Safety Rules, effective July 30, 2007.

....

It is abundantly clear to the Board that the above stated charge was precise and specific as to the alleged impermissible conduct of Claimant on the date in question, to wit, November 3, 2007, and that the charge pertained to a violation of GCOR Rule 70.3 (Job Briefing). The Organization's assertion that the charge raised against Claimant did not fit the circumstances of the situation is separate and apart from its assertion that the

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charge was imprecise; but this assertion too, is found by the Board, upon review of the prevailing circumstances not to have any validity in fact, and therefore, accordingly is rejected.

The undisputed fact that Claimant of his own volition elected to report to work without having been called out to work overtime and that, upon arrival at the work site he proceeded to perform inspection of the welding truck which he acknowledges is **work covered by a job briefing** constitutes proof in the Board's view sufficiently substantial to support Carrier's action of assessing Claimant the subject five (5) day suspension without pay for having violated GCOR Rule 70.3.

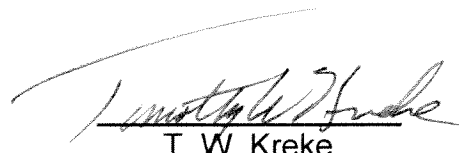
Accordingly, the Board rules to deny the subject claim in its entirety.

AWARD

Claim Denied


George Edward Larney
Neutral Member & Chairman


D. A. Ring
Carrier Member


T. W. Kreke
Employee Member

Chicago, Illinois
Date: April 13, 2010