

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 126
UNION PACIFIC RAILROAD COMPANY) Award No. 103
)

Hearing Date: April 22, 2008

1. The Level 4C UPGRADE discipline assessment (120 day suspension) to MR. D. R. Wilson for an alleged violation of Union Pacific Rule 8.3 (Main Track Switches) was not justified
2. As a consequence of the violation outlined in Part (1) above, the Claimant shall have the removal of charges and the assessment of discipline from his record and for him to be paid for all lost time account the Carrier failed to meet their burden of proof.

The Organization contends that Carrier did not afford Claimant a fair and impartial

hearing because it conducted a joint hearing with Claimant and the Foreman. We do not agree. Both employees were investigated for their responsibility in the same incident and the evidence against each employee was the same. We have scoured the record and we fail to find any evidence admitted against one of the employees that prejudiced the rights of the other. There is no prohibition in the Agreement of joint investigations and we see no way in which Claimant's rights were prejudiced by the procedure. We conclude that Carrier afforded Claimant a fair and impartial investigation.

The record reflects that on August 18, 2007, Claimant was the Hoisting Engineer and chief operator of the MP65 crane, working on a bridge replacement at Bridge 0.93 on the Lockhart Subdivision near Smithville, Texas. At around 5:00 p.m., as the Form B was expiring, Claimant tied up at an industry track just off the main line. The Assistant Hoisting Engineer lined the switch for the industry track so Claimant could move the crane. The switch was not relined for the main track and was not locked. Early the following morning, a train on the main line ran through the switch. The Assistant Hoisting Engineer admitted his responsibility for failing to line the switch back to the main line and failing to lock it and accepted the Level 4C discipline.

Claimant testified that he was familiar with Rule 8.3. He further testified that he "failed to go back and double check the switch." after tying up the crane. He testified that he, the Foreman who was Employee-in-Charge and the Assistant Hoisting Engineer were required to have a job briefing to discuss the position of the switch after tying up the crane and that no job briefing was held. We hold that Carrier proved the charge by substantial evidence.


The Organization objects to the severity of the penalty. Our role in reviewing the penalty is very limited. We are not authorized to disturb the penalty merely because we would have imposed a lesser penalty had we made the decision to discipline. We only review the penalty to determine whether it was arbitrary, capricious or excessive. We note that failure to properly line and lock a switch in dark territory can have severe consequences for safety. We further note that the penalty was in accordance with Carriers UPGRADE progressive discipline policy. We are unable to say that the penalty imposed was arbitrary, capricious or excessive.

AWARD

Claim denied.



Martin H. Malin, Chairman



B. W. Hanquist
Carrier Member

Sept 17, 2008



T. W. Kreke
Employee Member

Sept 17, 2008

Dated at Chicago, Illinois, August 31, 2008