

PUBLIC LAW BOARD NO. 6402

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
B. W. Hanquist, Carrier Member

STATEMENT OF CLAIM:

FINDINGS:

On February 14, 2007, Claimant was notified to report for a formal investigation on February 20, 2007, concerning his alleged failure to know where his Roadway Worker Protection was when asked by the FRA Track Inspector on January 23, 2007. The hearing was postponed to and held on February 28, 2007. On March 19, 2007, Claimant was advised that he had been found guilty of the charge and had been assessed discipline at UPGRADE Level 4, a 30-day

suspension.

The record reflects that on January 23, 2007, an FRA Track Inspector reported that Claimant "was in the foul of Main 1 and had no information concerning on-track safety except to say that there was a form B in effect. He did not know the limits, tracks involved, with a stop or not. When asked if he attended job briefing he said he had, but he guessed he had not really paid attention." The Organization objects to the introduction of the Track Inspector's report because the Track Inspector did not testify. We do not agree. Carrier does not have subpoena power and could not compel the Track Inspector to appear as a witness. We find no error in the introduction of the report into evidence.

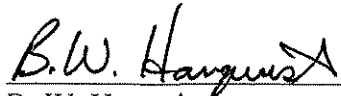
The Inspector's report was corroborated by testimony from the ARASA Supervisor who related that he questioned Claimant the following morning and Claimant stated that he had not paid attention at the job briefing. Furthermore, when questioned at the investigation about his knowledge on the day of the incident, Claimant was evasive. He was unable to give the limits of the Form B, stating merely, "I acknowledge and understood that I was under a Form B." When asked, "How do you prove you know where the limits are?", he replied, "Through the EIC." Claimant's own testimony and the testimony of the ARASA Supervisor corroborated the Track Inspector's report. We conclude that Carrier proved the charges by substantial evidence.

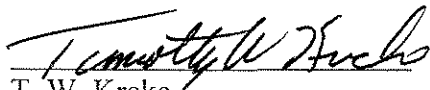
The penalty imposed was consistent with Carrier's UPGRADE policy. We cannot say that it was arbitrary, capricious or excessive.

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, September 8, 2008