

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 129
UNION PACIFIC RAILROAD COMPANY) Award No. 110
_____)

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

Hearing Date: April 22, 2008

STATEMENT OF CLAIM:

Claim on behalf of Mr. E. A. Montoya, Mr. V. Garza, Mr. J. J. Pena, and Mr. R. Garcia to have charge letter dated October 10, 2007 and letter of Investigation discipline dated November 5, 2007, whereas the Claimants were assessed with a Level 3 after an investigation held on October 17, 2007 in Odessa, Texas be removed and disregarded from their personal records and with five (5) days pay for their five (5) day suspension and with their Per Diem.

FINDINGS:

Public Law Board No. 6402 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 October 10, 2007, Claimants were notified to report for a formal investigation on October 17, 2007, concerning their alleged failure to ensure proper working limits prior to fouling the track on October 1, 2007. The hearing was held as scheduled. On November 16, 2007, Claimants were advised that they had been found guilty of the charge and had been assessed discipline at UPGRADE Level 3, a 5-day suspension.

The record reflects that on October 1, 2007, Claimants were working on Gang 9295 at a switch located at MP 578.1 on the Toyah Subdivision. The Signal Foreman was the Employee-in-Charge. He obtained track and time from MP 575 to MP 577. He believed that the switch on

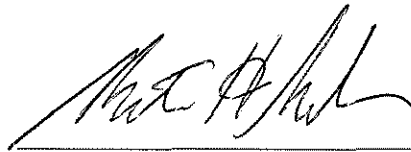
which they were to work was located at MP 576.5, but was mistaken. Consequently, when the crew began working on the switch at MP 578.1, they were outside of the limits of their protection.

There is no dispute that Claimants did not themselves verify that they were within their protection prior to starting work. Instead, they relied on the representation from the EIC that they were protected. By failing to verify their protection, Claimants violated Rules 136.8.2 and 136.3. Carrier proved the charge by substantial evidence.

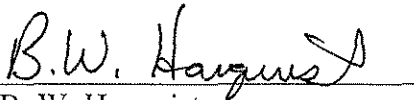
The penalty imposed was consistent with Carrier's UPGRADE policy. We cannot say that it was arbitrary, capricious or excessive.

AWARD

Claim denied.

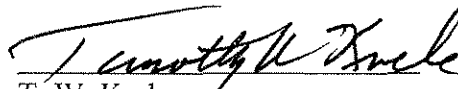


Martin H. Malin, Chairman



B. W. Hanquist
Carrier Member

Sept 17, 2008



T. W. Kreke
Employee Member

Sept 17, 2008

Dated at Chicago, Illinois, September 8, 2008