

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 105
UNION PACIFIC RAILROAD COMPANY) Award No. 90
_____)

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

Hearing Date: January 7, 2008

STATEMENT OF CLAIM:

- (1) The Level 1 UPGRADE discipline assessment (Letter of Reprimand) to Mr. W. P. Menard for an alleged violation of Union Pacific Rule 1.15 (Duty - Reporting or Absence) was not justified. The assessment of current violation (Level 1) plus the Current Discipline Status, equated to the assessment of Level 3 discipline.
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall have the Level 1 (letter of reprimand) removed from his record.

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 August 20, 2006, Claimant called his supervisor at 5:12 a.m. and advised that he would be late for his shift which was scheduled to begin at 6:00 a.m. The supervisor told Claimant that if he would be late, he should not report to work. The Organization filed a claim on September 26, 2006, alleging that Claimant was disciplined without a fair and impartial hearing in violation of Rule 21. Carrier responded that it had issued Claimant a notice of proposed discipline on August 21, 2006, which proposed discipline assessed at UPGRADE Level 1 for violating Rule 1.15 on August 20, 2006. Because Claimant was already at a Level 2 discipline status, the Level 1 would result in a discipline assessment at Level 3. Carrier further indicated that the notice gave Claimant 15 days to request a hearing, that Claimant failed to request a hearing and that, accordingly the discipline became effective without a hearing.

The Organization responded that Claimant had been given a notice of investigation dated August 28, 2006, for which Claimant signed on September 1, 2006. However, the Organization failed to produce a copy of the notice and Carrier denied ever issuing such a notice. Carrier did produce a copy of the Notice of Proposed Discipline and a statement that no request for hearing was received. The record contains no evidence that Claimant failed to receive the Notice of Proposed Discipline or that he requested a hearing. Rule 21(a)(2) states:

When employees are offered discipline pursuant to Paragraph (g), such employees will either accept or reject the offer within fifteen (15) calendar days from the date of receipt of the letter of charges. Discipline will be considered accepted if formal rejection is not received within fifteen (15) calendar days from the date of receipt of Carrier's letter. When discipline is rejected, Carrier will have no more than fifteen (15) calendar days from date of receipt of rejection in which to schedule and conduct the hearing and hearings held outside the thirty (30) day period referred to above will not be a violation of this rule.

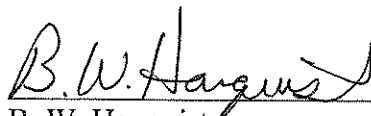
Because Carrier gave Claimant notice of the proposed discipline and Claimant failed to reject the proposed discipline, the discipline is deemed accepted in accordance with Rule 21(a)(2), as we have previously held. See Case No. 82, Award No. 71.

AWARD

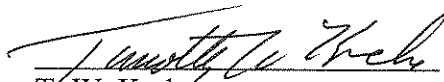
Claim denied.



Martin H. Malin, Chairman



B. W. Hanquist
Carrier Member

 4-22-08

T. W. Kreke
Employee Member

Dated at Chicago, Illinois, April 17, 2008