

BEFORE PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 2

Statement of Claim: Claim of the System Committee of the Brotherhood that:

- (1) The discipline of UPGRADE Level 2 and disqualification as Track Foreman imposed upon Nathan Martinez for an alleged violation of Agreement Rule 1 and 45 when the Carrier sustained the charges of Union Pacific Rule 74.8 Seat Belts when Claimant allegedly was not properly wearing seat belt protection while occupying a Carrier vehicle on September 10, 2001.
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be exonerated of all charges against him, the Carrier's Level 2 be expunged from his record, that he be immediately reinstated to his position of Track Foreman, with his Track Foreman seniority date restored unimpaired and be reimbursed for all wage loss suffered by him...for all time he was improperly withheld from his Foreman's position.

Background

Track Foreman Nathan Martinez was charged with not properly wearing his seat belt while he was a passenger in a Carrier vehicle at "O" Street on the Riverdale Branch on September 10, 2001. Following a hearing on October 23, 2001, the charges were sustained on November 16, 2001, and Claimant was found to have violated Union Pacific Rule 74.8, which provides:

74.8 SEAT BELTS

When riding in company vehicles, or being transported by contract carrier, all employees, including the driver, must have safety seat belts buckled in restraining position before the vehicle moves. Employees must keep the seat belts buckled while in the vehicle.

Claimant was assessed a Level 2 assessment for his violation of Safety Rule 74.8 and was required to attend one (1) day of alternative assignment with pay to develop a Corrective Action Plan.

Contentions of the Parties

The Carrier contends that the Record contains substantial probative evidence that Claimant did not properly wear his seat belt while he was a passenger. Therefore, he was correctly found to have violated Safety Rule 74.8. Furthermore, he was accorded his due process rights consistent with the Collective Bargaining Agreement.

The Organization alleges that the Claimant did not violate Rule 74.8 because (1) Claimant was wearing his seat belt, (2) the Carrier vehicle was stopped at the time that MTM R.E. Belmore approached Claimant, and (3) the seat belt in question had a ratchet-type mechanism that was designed to take up the slack after it was buckled. Given these alleged facts, the Organization submits that the Carrier failed to meet its burden of proof that Claimant did violate the Safety Rule for which he was charged.

Findings

It is undisputed that Claimant was, in fact, wearing his seat belt when MTM Belmore approached the vehicle in which Claimant was a passenger. Thus, the hearing focused largely on the conflict in testimony as to whether the truck was moving, what type of

latch mechanism the belt had, and whether Claimant had properly tightened the belt.

The question of whether the truck was moving is not significant. Even assuming it had not yet begun to move, both parties agree that it was necessary for all passengers, as well as the driver, to buckle up and that Claimant had, in fact, done so prior to Belmore's approaching him. As to the type of belt that was involved, the credible evidence in the Record supports the conclusion that the belt did not have a ratchet mechanism that took up slack when it was buckled. Rather, the belt was the type that required the wearer to latch the male and female sections of the buckle, then grab the strap to pull the belt snugly against the body.

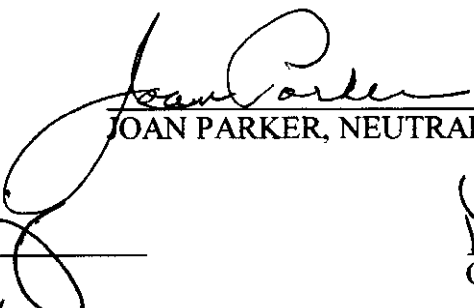
Claimant and MTM Belmore disagreed about how many inches of slack were visible after Claimant buckled his belt. It was clear, however, that Claimant fully understood the importance of properly wearing a seat belt and that he accepted responsibility for working under safe conditions. While the Carrier did prove that Claimant's belt had some play, it did not demonstrate that there was excessive slack. But even assuming *arguendo* that the belt should have been tighter, there is no evidence that Claimant either willfully ignored safety rules or that his belt was so loosely fastened as to pose a safety risk. The belt could have fit more snugly against Claimant's body, but there was little objective evidence as to how much slack there was and how much there should have been. The Carrier's case rested only on MTM Belmore's personal opinion that Claimant's belt should have had "a lot more [strap] sticking out" after it was latched. (Tr. 17).

For these reasons, the Board has concluded that the Carrier's imposition of a Level 2


assessment was unduly harsh. Moreover, under the Carrier's Discipline UPGRADE Policy, a violation of Safety Rule 74.8 should have resulted in a Level 1 assessment (Letter of Reprimand). (See Discipline Assessment Table.) Thus, while the Carrier properly cited Claimant for violating Safety Rule 74.8, it was inappropriate to impose more than a Level 1 assessment. With respect to the disqualification, the evidence demonstrates that Claimant was neither docked pay nor disqualified in connection with the safety belt infraction. He received a letter dated September 11, 2001 which disqualified him as foreman as a result of his alleged failure to perform his duties efficiently and failure to submit time rolls in a correct manner. Manifestly, the bases for Claimant's disqualification are unrelated to the charges before this Board.

Award


The claim is sustained in part. Claimant violated Safety Rule 74.8, but for the reasons set forth above, his penalty Is hereby reduced to a Level 1 upgrade (Letter of Reprimand).



JOAN PARKER, NEUTRAL MEMBER



CARRIER MEMBER
DATED: 6/30/03



ORGANIZATION MEMBER
DATED: 6-30-03