

BEFORE PUBLIC LAW BOARD 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 3

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

- (1) The Level 2 UPGRADE discipline assessment (one day of alternative assignment with pay to develop a corrective action plan) to Mr. R.M. Anderson for an alleged violation of Agreement Rules 1 and 45 when the Carrier sustained a violation of Operating Rule 70.3 (Job Briefing), Rule 70.4 (Safe Working Space) and Rule 76.1 (Use of Tools and Equipment) was not justified.
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be exonerated of all the above-mentioned charges, the Carrier's Level 2 Discipline be expunged from his personal record.

Background

This case concerns an employee, R. Anderson, whose finger was severed while he was adjusting the wedges to set up for a field weld. As a result of the Manager's investigation of the incident, it was concluded that while Anderson was attempting to make the field weld, he failed to have a proper job briefing as instructed by MTM Halte; neglected to keep a safe distance from his helper, Mr. Samaniego; and did not use the proper tool. Consequently, an accident occurred in which Mr. Samaniego, while using a sledgehammer, severed Claimant's finger. A hearing was held on November 8, 2001, following which a Notice of Discipline Letter was issued on December 6, 2001 advising Claimant that his personal record was being noted with a Level 2 UPGRADE assessment.

of developing a corrective action plan to modify his behavior. Thereafter, the BMW submitted a claim on behalf of Claimant.

The Rules at Issue

Rule 70.3 of the Union Pacific Railroad's Safety Rules states:

Use the Job Briefing process:

--Before work begins, when all persons, including employees and contractors, are present.

--After work begins, if person(s) arrive who missed the original job briefing.

--When changes occur to the work plan or conditions change.

Each work plan must consider hazards, assign specific responsibilities, and explain those assignments.

Rule 70.4 Safe Working Space

When working in groups, be aware of the work and movement of other group members and equipment.

Rule 76.1 Use of Tools and Equipment

Give the operation of tools, equipment and machinery your full undivided attention and wear required personal protective equipment (PPE). Use the correct tool or equipment for the task to be accomplished in accordance with the manufacturer's operating instructions. Improvised, altered, or shop made tools or equipment are prohibited unless approved through departmental procedures. Unauthorized use of tools, equipment and machinery is prohibited.

Carrier's Position

The Carrier contends that Claimant was afforded all the elements of due process outlined in the Collective Bargaining Agreement and that the formal investigation was free of reversible error. With respect to the merits, the Carrier submits that the Record contains substantial, credible evidence to support the finding of guilt of the charges preferred. It is the Carrier's additional position that the discipline assessed was not arbitrary or capricious; nor did it constitute an abuse of managerial discretion.

Organization's Position

The Organization claims that the formal investigation of this matter was flawed by the Carrier's failure to call Mr. Samaniego as a witness. In the Organization's view, Samaniego could have provided relevant information as to whether or not Claimant conducted an adequate and proper job briefing.

As to the merits of the dispute, the Organization contends that the Carrier has failed to prove that Claimant failed to hold a job briefing or that he performed his assignment without understanding the hazards of the job. Both Claimant and Samaniego knew the rules and safety procedures associated with welding. They were qualified as a Welder and Welder Helper and had worked on similar assignments in the past.

Findings

With respect to the Organization's procedural argument, it is clear that the Carrier did not have an obligation to call Mr. Samaniego as a witness at the formal investigation. If the Organization believed that Mr. Samaniego had relevant information to offer in support of Claimant's case, it was free to call him as its witness. It is not a function of

this Board to demand that parties call specific witnesses to assist in the presentation of their cases. Obviously, failure to call witnesses who ultimately are necessary to a case may seriously undermine a party's position in a particular situation. However, that is a decision for each party to make as it proceeds on the property. In the instant matter, the Organization has not has not cited any contractual language in support of its procedural argument. Therefore, the Board rejects this contention.

As to the merits of the claim, there is evidence in the Record that Claimant's accident resulted, at least in part, from his failure to properly complete a job briefing. As Claimant stated, he and Mr. Samaniego had done so many welds together in the past that they knew what to do and how to do it. (Tr. 35 and 38). In fact, when asked if he had followed the job briefing guidelines which state that safety rules applicable to a job must be discussed, Claimant said no.

It is clear from the testimony that Claimant and Mr. Samaniego did not discuss the hazard of anyone being in the path of a swinging tool. However, a job briefing is not complete if hazards that are present are not discussed. This omission, coupled with a lapse of attention, resulted in the mishap.

Given these findings, the discipline imposed on Claimant was neither arbitrary nor capricious. The injury he sustained was serious, and his failure to pay close enough attention to the requirements of safe operation gave the Carrier good reason to apply its UPGRADE policy.


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AWARD

The claim is denied.


JOAN PARKER, NEUTRAL MEMBER


CARRIER MEMBER
DATED: 6/30/03


ORGANIZATION MEMBER
DATED: 6-30-03