

**BEFORE PUBLIC LAW BOARD NO. 6621**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**UNION PACIFIC RAILROAD COMPANY**

**Case No. 8**

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

- (1) The Level 1 UPGRADE discipline assessment (Letter of Reprimand) to Mr. F. E. Pena for an alleged violation of the Agreement when the Carrier sustained a violation of Operating Rule 70.1 (Safety Responsibilities) 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 1 discipline be expunged from his personal record.

**Background**

On January 7, 2002, a Notice of Hearing was issued to Francisco E. Pena, which read, in part:

On January 3, 2002, while working as an Operator on the Coast Subdivision at Redwood Empire Lumber switch, you allegedly were observed bent over picking up angle bars without using proper body mechanics.

Following a hearing held on January 18, 2002, a Notice of Discipline Letter was issued on March 11, 2002, which sustained the charges. Claimant was found to have violated Operating Rule 70.1 and was assessed a Level 1 upgrade (Letter of Reprimand). Rule

70.1 (Safety Responsibilities) states, in relevant part:

Employees must:

- Be responsible for their personal safety and accountable for their behavior as a condition of employment,
- Take every precaution to prevent injury to themselves, other employees, and the public.
- Comply with all rules, policies, and outstanding instructions.
- Report, correct, or protect any unsafe condition or practice.
- Be aware of and work within the limits of their physical capabilities and not use excessive force to accomplish tasks.
- Use good judgment in fulfilling job responsibilities.

The Organization appealed the discipline, contending that the Carrier committed procedural violations and failed to meet its burden of proof.

### **Findings**

In essence, the Organization contends that Claimant was denied due process by the manner in which he was notified of the Investigation and by virtue of the fact that a Spanish interpreter was not provided by the Carrier at the hearing. The evidence in the Record, however, demonstrates that the Organization's contentions are without merit.

Notice of the Investigation was timely delivered to Claimant's address of record, and the fact that Claimant's wife signed for it did not undermine his due process rights. Given that Claimant appeared at the Investigation with Union representation reflects that he had the necessary notice.

As to the issue of the interpreter, the Organization did not cite any rule that obligated the Carrier to provide an interpreter for the disciplinary proceeding. Furthermore, it is undisputed that a Mr. Licea and District Chairman Daniel Novella provided translation services for Claimant at the hearing. Given these facts, there is no basis to conclude that

Claimant was deprived of a fair hearing or that he did not understand what was being said. Although the Organization submits that the Hearing Officer was intimidating, the Board finds that the Hearing Officer was fair and even-handed and that he properly performed his role in developing a clear record of the investigation.

As to the merits, the Board concludes that the Carrier proved that Claimant was guilty of the offense set forth in the Letter of Discipline. Manager Track Projects A.S. Gonzalez testified credibly that he observed Claimant picking up angle bars "bending straight over without bending his knees, putting pressure on his back" when the proper way was to bend with his knees, "using his legs to lift." (Tr. 104). Also significant is the fact that Claimant was counseled previously by Gonzalez on the need to use proper lifting techniques as a precaution to avoid injury. Discipline was appropriate in this case because of Claimant's apparent unwillingness to adhere to the Carrier's Safety Rules.

The discipline assessed was reasonable and in compliance with the Carrier's Upgrade policy. That policy has been reviewed by Neutrals of Public Law Boards, and it has been repeatedly found to be neither arbitrary nor capricious. To the contrary, the policy has been recognized as progressive in nature and a valid exercise of managerial rights. In the instant case, the discipline was for cause. The Level 1 assessment was a corrective and measured response to Claimant's conduct, intended solely to reinforce the importance of working safety so as to avoid personal injury.

Award

The claim is denied.

  
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JOAN PARKER, NEUTRAL MEMBER

  
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CARRIER MEMBER

DATED: 7-16-03

  
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ORGANIZATION MEMBER

DATED: 7-16-03