

PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

UNION PACIFIC RAILROAD COMPANY

Case No. 19

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

In view of the Carrier's action of assessing the discipline at its disposal to assess upon Claimant, that of Level 1 and accomplished same without according him his contractual right to due process, we respectfully request that Claimant now have the Levels assessed him removed, and the alleged charge(s) be expunged from his personal record.

Background

On August 2, 2002, Claimant Dirk J. Prevo was assigned as a truck driver on a track gang working in the Portland, Oregon area. That morning, he arrived at the Albina depot and told his foreman that he could not work because he had to locate his wife and child, whom he had reported as missing. At 8:30 a.m., Claimant called Maintenance of Track Manager C.W. Brookshire and said he was unable to work because he had to find his wife and child. Brookshire said that Claimant had to report for work or he would be disciplined. In spite of this warning, Claimant failed to report.

On August 9, 2002, the Carrier notified Claimant that an investigation would be conducted based on his alleged absence without authority. The investigation was held on August 16, 2002. Thereafter, the Carrier advised Claimant that he had been found guilty of violating Union Pacific Rule 1.15, Duty Reporting or Absence, which states:

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority.

The Carrier placed Claimant in Level 2 under its Upgrade discipline policy for his violation of Rule 1.15 (a Level 1 offense) because of a prior Level 1 discipline still active on his record.

Findings

While the Organization contends that on August 2, 2002, Claimant contacted his supervisor and that arrangements were made to accommodate his absence, the Record does not support this contention. It is undisputed that Claimant did not report to his assignment on August 2nd and that Mr. Brookshire warned him that if he failed to report for work, he would incur an unauthorized absence. Moreover, Claimant previously had been warned by Mr. Brookshire about his excessive absenteeism:

The Organization also relies, in part, on Rule 33, Paragraph (h) which provides that if an employee desires to be absent based on good cause, he must notify the Roadmaster in the Track Department..."if practicable, not less than one (1) hour prior to his regular starting time." Rule 33, Paragraph (h), however, does little to support the Organization's case. Claimant was due at work by 7:00 a.m. Therefore, pursuant to Rule 33, he should have reported his planned absence by no later than 6:00 a.m. The Record is plain, however, that Claimant did not inform Mr. Brookshire of his intended absence until 8:30 a.m. Clearly, therefore, he cannot seek vindication under Rule 33.

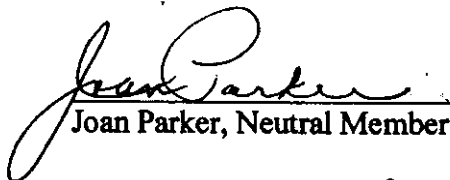
Moreover, while the Board is mindful that Claimant had domestic issues that he was


trying to work out, apparently his personal problems had been negatively affecting his attendance for some time. In this regard, Mr. Brookshire testified credibly that he had counseled Claimant about his absenteeism and had urged him to resolve his personal problems so that he could maintain regular attendance.

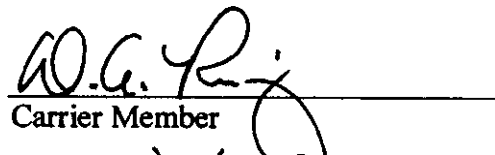
Clearly, the Carrier has a right to expect its employees to report regularly and punctually to work. MTM Brookshire had show patience in the past, and apparently, did give Claimant time to address his domestic problems. In fact, it is undisputed that on a prior occasion, Claimant had even used the missing wife and child excuse. Counselings and warnings, however, did not result in a sustained improvement in Claimant's attendance. Thus, the Carrier was within its rights in taking more stringent measures. The discipline it imposed was both appropriate and corrective in nature. Its obvious objective was to encourage Claimant to arrange his personal life so that he could better attend to his reporting responsibilities. Given these findings, there is no valid basis to overturn the discipline imposed.

Award

The claim is denied.


Joan Parker, Neutral Member


Organization Member
Dated: 12-11-03


Carrier Member
Dated: 12-11-03