

PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 23

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

In view of the Carrier's action of assessing a Level 3 discipline upon Claimant, which resulted in a five (5) day suspension, we respectfully request that Claimant now be compensated for all wage loss suffered by him, straight time and overtime, and that the alleged charge(s) be expunged from his personal record.

Background

Claimant Roberto Ramirez has been employed by the Carrier (formerly the Southern Pacific Transportation Company) since June 1, 1979. On October 28, 2002, he was working as Employee-In-Charge (EIC) and tamper operator on a surfacing gang that was operating between Bealville and Caliente, California. Working closely with him was another employee, ballast regulator operator Steven Van Winkle. Also working in the Bealville area was Track Supervisor Tony Gonzales, who operated a hi-rail while inspecting and greasing the track. The two surfacing machines and the hi-rail operated on the main line between Bealville and Caliente under joint track and time.

At approximately 11:00 a.m., the Mojave dispatcher radioed Claimant and informed him that his track and time were about to expire. The dispatcher also advised that the on-track equipment needed to be cleared into the Bealville siding to permit two trains to pass. Track Supervisor Gonzales monitored the radio communications and then called

Claimant on the radio so that the three employees (Claimant, Gonzales, and Van Winkle) could conduct a job briefing to coordinate their movements into the siding.

The three determined that Supervisor Gonzales would first line the switch for the surfacing machines' southward movement into the siding, and then re-line the switch to back his hi-rail into the siding. Accordingly, Gonzales lined the switch, and Van Winkle went through first and cleared his ballast regulator. Claimant proceeded next and cleared his tamper approximately 1500 feet into the siding. Immediately thereafter, Claimant called the dispatcher and relinquished the surfacing machines' track and time.

After lining the switch for his own movement, Gonzales backed his hi-rail south into the siding and radioed the dispatcher to relinquish his own track and time. As he continued backing further into the siding, Gonzales lubricated track. As he stated:

I was lubricating on the siding. You know, I figured that I might as well lubricate some track while we're waiting on the trains. And then I was observing what I had just – because I came around on the main track and I was looking at the grease pattern on the main track and looking where I was going. Like I say, you know, I looked several times. But I didn't see anybody. (Carrier's Ex. B, p. 50)

According to Gonzales, he knew that Claimant and Van Winkle were going to wait for two trains to pass, and he further assumed that "by them going all the way into the siding at Bealville, I thought they were headed for the spur track." (Carrier's Ex. B, p. 55) In any event, Gonzales continued oiling tracks as he backed his hi-rail, and eventually he came around a curve and collided with and damaged the front buggies on Claimant's tamper.

A notice of investigation, dated November 12, 2002, was sent to Claimant stating as follows:

...to develop the facts and place responsibility, if any, that while working as Tamper Operator on October 28, 2002... you allegedly failed to give a follow-up job briefing with two other employees when the working conditions or procedures changed. Consequently, Mr. Antonio Gonzales...collided with the tamper.

Following an investigation, which was held on December 10, 2002, Director Track Maintenance K.L. Drinnon concluded that Claimant had failed to conduct a job briefing when working conditions changed, in violation of Rule 136.3.1. Accordingly, Claimant was assessed Level 3 discipline, which resulted in a five-day actual suspension and completion of a corrective action plan. Following denial of an appeal by the Organization, the matter was submitted to this PLB for determination.

Findings

The Carrier claims that the collision occurred because Claimant failed to conduct a job briefing as to where each vehicle would stop once they were cleared into the siding. This Board respectfully disagrees.

Supervisor Gonzales came into Claimant's track and time. Therefore, it was his responsibility to obtain an updated job briefing from Claimant. Undisputedly, Claimant had held a job briefing prior to moving into the siding and had informed Gonzales that he and Van Winkle would wait there for two trains to pass prior to going back to work. This did not change. Gonzales, however, entered Claimant's track and time without talking to him. Moreover, Gonzales made an unwarranted assumption that Claimant and Van Winkle had moved their positions into the spur track.

It is clear from the Record that Gonzales was preoccupied with moving his hi-rail and lubricating the track. While he testified that he was "looking at what I was doing"

(Carrier's Ex. B, p. 56), he conceded that he was also oiling and "looking at the grease pattern on the main track." (Carrier's Ex. B, p. 50) Additionally, there were some blind curves which partially blocked his vision. Gonzales admitted that he did not attempt to contact Claimant to find out if, in fact, he and Van Winkle were in the siding or heading for the spur. During the investigation, Gonzales also candidly stated that the accident was his fault. Clearly, he was correct.

Claimant, as EIC, properly performed his duties. He conducted at least three job briefings that morning. He did what he said he was going to do, and he and Van Winkle kept within each other's sight. During the last job briefing with Gonzales, Claimant said he would be backing into the siding to wait for two trains and then return to work. That condition did not change. To the extent that the situation was altered, it was because Gonzales entered Claimant's track and time without contacting him to verify his position.

It is the conclusion herein that the Carrier erred in charging Claimant with responsibility for the collision. While there is no evidence in the Record supporting the Organization's request for damages in the form of overtime, the Claimant is entitled to a rescission of his Level 3 discipline and reimbursement of five days' pay at straight time.

Award

The claim is sustained. The Level 3 discipline shall be rescinded, and Claimant shall be reimbursed the straight time wages he lost during his five-day suspension.


Carrier Member

Dated: January 9, 2004


Joan Parker, Neutral Member


Organization Member

Dated: 1-9-04